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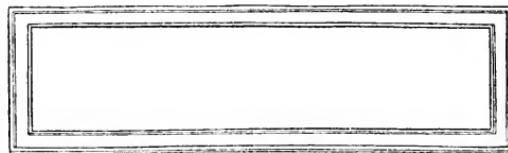
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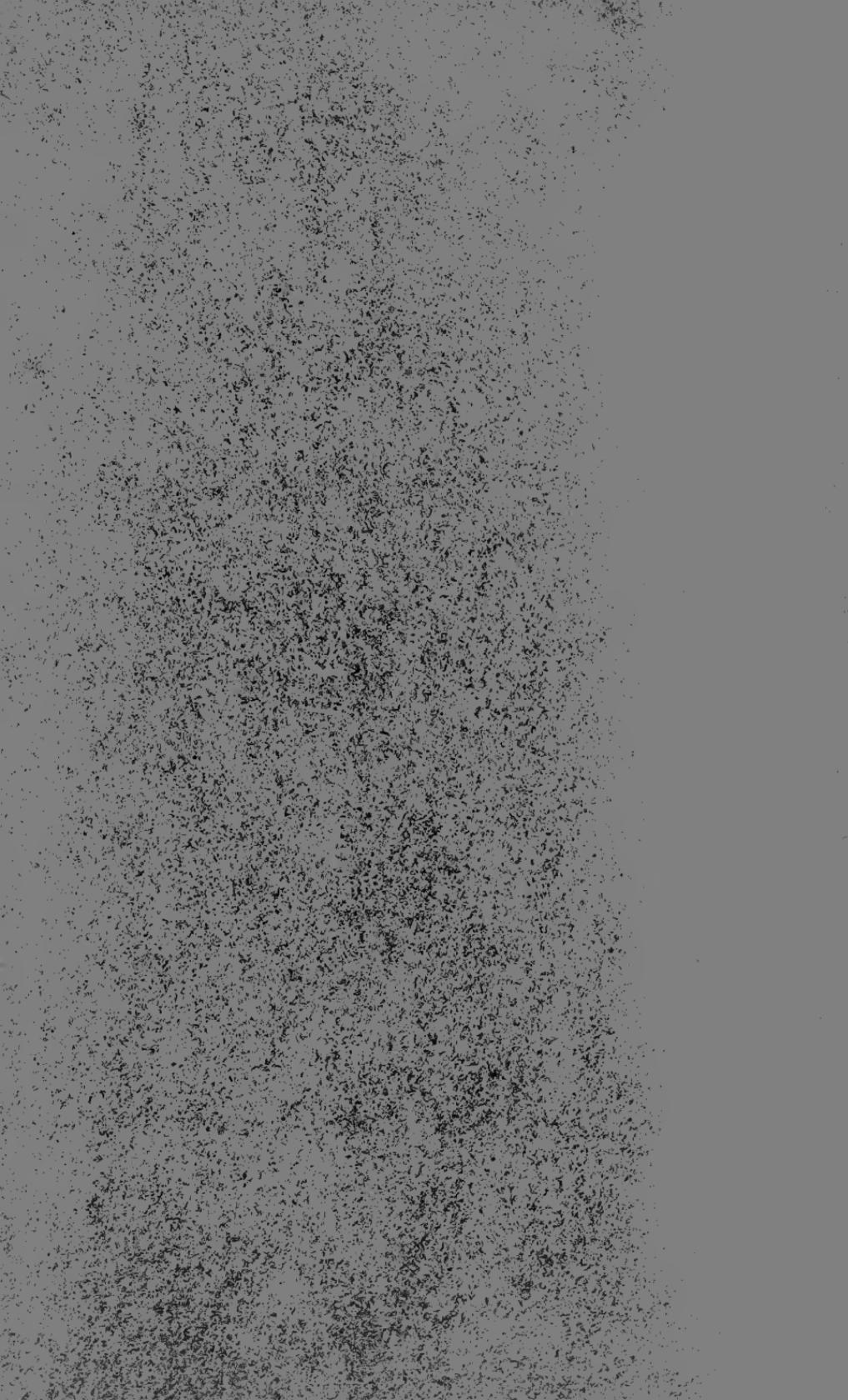
John H. Astor
COMPILATION
OF THE
ELECTION LAWS
OF
TENNESSEE

Compiled and Annotated by
ERNEST N. HASTON,
Secretary of State.



EWING - NASHVILLE





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P R E F A C E

The election laws of Tennessee are compiled, annotated, indexed, and put in regular code form in this Compilation. Such system is considered to be a great improvement upon the previous publications containing unsystematic collections of the legislative acts in their original forms. In this Compilation the various legislative acts have been systematically put together; and the amendments have been woven into their proper places in the original acts.

The statutes are reproduced in full without alteration, except that they are put in the enacted form as existing statutes instead of the enacting form, and the titles and enacting clauses are omitted. Where a wrong word or an omission occurs in the original, the correction suggested is put in brackets immediately after such word. The sections of the original statutes are often subdivided into subsections so that the subject-matter may be indicated in the index line.

The statutes embraced in this Compilation are annotated by notes of the decisions of the supreme court in any way construing and affecting them, or bearing upon them or the general subject within their scope.

This Compilation contains all the election laws necessary for the instruction and guidance of the election officers and the voters in all state, county, and national elections in Tennessee. There is no pretense that it contains all the laws covering matters growing out of elections, such as contested elections and the distinct and separate criminal laws pertaining to elections.

The Index is made to the notes or annotations as well as to the statutes, and it is made as full as convenience may require. Great effort has been made to make it easy to find any and all statutes and notes. Some familiarity with the statutes and the arrangement of the subject-matter will make it easy to find the law on any subject by turning to the body of the statutes in the book, where the subject index line of

each section, and subsection, and note will conveniently indicate what is sought to be found.

The numbers in brackets immediately following the section numbers of this compilation are the section numbers in Shannon's New Annotated Code.

If this Compilation is found to be useful, I will feel compensated for the extra effort made and work done to make it so.

A handwritten signature in cursive ink, appearing to read "Ernest N. Haslam".

Secretary of State.

Nashville, Tenn.,

Jan. 27, 1922.

A COMPILATION OF
THE ELECTION LAWS OF TENNESSEE

- CHAPTER 1. Elections by the General Assembly (Sec. 1).
- CHAPTER 2. Elections by the County Court (Secs. 2-7).
- CHAPTER 3. Elections by the People (Secs. 8-33).
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CHAPTER I.

ELECTIONS BY THE GENERAL ASSEMBLY.

1. [1136 (812) 1003]. **Elections by general assembly.**—The following officers are appointed, or elected by joint ballot of the two houses of the general assembly: The secretary

of state, the treasurer, the comptroller, and the state board of elections. (Const. of Tenn., art. 3, sec. 17; Id., art. 7, sec. 3; Acts 1909, ch. 103, sec. 1.)

Sections 1137 to 1143 of the Code of 1896 as to election and appointment of United States senators are omitted from this compilation, because no longer in force.—By amendment to the federal constitution (art. 1, sec. 3), United States senators are no longer elected by the state legislature, but must be elected by the people; and by Acts 1913, 1st ex. ses., ch. 8, enacted in pursuance of said amendment, provision is made for their election by the people, except a vacancy in the office when congress is in session, may, under section 3 thereof, be filled by appointment of the governor until his successor is elected at the next regular biennial election in November, and until his qualification. Said act is compiled in sections 25-33 in this compilation. Said constitutional amendment and said legislative act operate, by construction or necessary implication, to repeal or suspend the statutes embraced in sections 1137 to 1143 of the Code of 1896, and they are, therefore, omitted from this compilation.—Ed.

CHAPTER 2.

ELECTIONS BY THE COUNTY COURT.

2. [1144 (817) 1011]. **Elections by county court.**—The following officers in this state are elected by the justices of the peace, in county court assembled: Coroners, rangers, county surveyors, poorhouse commissioners, workhouse commissioners, county standard keepers and sealers of weights and measures, notaries public, public administrators, public guardians, cotton and tobacco weighers, road commissioners, county revenue commissioners, and jail physicians or health officers; and in counties having turnpikes, the county courts therein may also elect turnpike superintendents (see Code, sec. 1748); and turnpike commissioners (see Code, sec. 1781).

1. **References as to the election of the various officers mentioned in this section.**—For elections of coroners, see Code, sec. 465; Const., art. 7, sec. 1; of rangers, see Code, sec. 571; Const., art. 7, sec. 1; of county surveyors, see Code, sec. 530; of workhouse commissioners, see Code, secs. 7400, 7403; of county standard keepers and sealers of weights and measures, see Code, sec. 575; of notaries public, see Code, sec. 3194; of public administrators and public guardians, see Code, sec. 583; of cotton and tobacco weighers, see Code, sec. 3485; of road commissioners, see Code, sec. 1651; of county revenue commissioners, see Code, sec. 935; of jail physicians or health officers, see Code, sec. 3109, and see, also, sec. 7440.—Ed.

2. **Officers formerly elected by the quarterly county court, but not now.**—Tax collectors were formerly elected by the quarterly county court, but they are now elected by the people. Blackburn v. Vick, 2 Heis., 381. See Code, secs. 520, 523, 865, 869, and 870. County commissioners of fish were formerly elected by the quarterly county

court, under Acts 1893, ch. 136 (embraced in secs. 2974-2978 of the Code of 1896), but by Acts 1907, ch. 489, sec. 16, said act was repealed.

3. Board of county commissioners for Shelby county.—By Acts 1911 (Private), ch. 237, a board of county commissioners was created to exercise all the powers and discharge all the duties previously vested in and imposed upon the workhouse commission, turnpike commission, county board of health, and poorhouse commission, in counties having a population of 190,000 or more, according to the federal census of 1910 or any subsequent federal census; which act, under the federal census of 1910, applies in Shelby county alone. Sub-section 6 of section 8 of this act was amended by Acts 1913 (Private), ch. 333.

By Acts 1913 (Private), ch. 132, said board of county commissioners in said counties is given full and entire charge of the public bridges in said counties; and by Acts 1913 (Private), ch. 61, said board is authorized to disburse the bridge funds.

Acts 1911 (Private), ch. 423, creating the office of bridge superintendent in said counties, was repealed by Acts 1913 (Private), ch. 133.—Ed.

4. Acts 1911 (Private), ch. 237, is not unconstitutional.—Said statute, creating a board of county commissioners, as shown in the preceding note, is not unconstitutional upon any of the grounds of attack made upon it in *Prescott v. Duncan*, 18 Cates, 106, as therein shown, especially in headnotes 9-12. See Const., p. 338, note 7; p. 384, note 12.

3. [1145 (818) 1012]. Vacancies filled by said court.—Vacancies in said offices and in the following offices are filled by election or appointment of the county court: Sheriffs, trustees, registers, public administrators and guardians, constables, county court clerks, and county tax assessors.

References.—See Const., art. 7, sec. 2 (p. 480); Code, secs. 401, 491, 585; *Beasley v. Ferriss*, 1 Lea, 461, 463; State, ex rel., v. *Campbell*, 8 Lea, 74, 81, 82; and as to a removed trustee, see Code, sec. 522.

4. [1146 (819) 1013]. Mode of proceeding.—When an officer is to be elected or appointed by the county court, or a vacancy filled, it is the duty of the court to hold an open and free election on the first day of the term, admitting all citizens to the privilege of offering as candidates, except such as are prohibited by the constitution or laws of the state. (1796, July ses., ch. 3, sec. 1; 1841-42, ch. 101, sec. 1; const., art. I, sec. 5.)

Vacancy in county court clerk's office to be filled by the justices, and not by the county judge.—See Code sec. 401, and note.

5. [1147]. Ayes and nays to be recorded.—In making all elections and appointments coming before the county courts, the vote of the justices present shall be taken by ayes and nays, the clerk calling and recording the name of

each justice, together with his vote, aye or nay, as it is given, which shall be entered on the minutes, together with the names of the persons elected or appointed. (1887, ch. 180.)

6. [1148 (820) 1014]. Adjournment of Election.—The court may, however, a majority of the justices consenting, adjourn the election to a subsequent day of the term. (1841-42, ch. 101, sec. 1, proviso.)

7. [1149 (821) 1015]. Notice of vacancies.—The presiding officer of the county court shall cause public notice to be given in writing, under his hand, to be set up on the courthouse door, at least three days before the meeting of the court, specifying the offices to be filled at that court. (1796, July ses., ch. 3, sec. 2.)

1. Elections by justices in county court assembled.—An election by the justices means an election by the justices in county court assembled; and an election by the county court implies an election by the justices. State, ex rel., v. Campbell, 8 Lea, 81, 82.

2. Election contrary to statute is erroneous.—An election and appointment to fill a vacancy in the office of the clerk of the county court, held and made contrary to the provisions of the statute, is erroneous. Sevier v. Washington Co., Peck, 352.

3. Requirement as to advertisement and time of election is directory.—The provision as to the advertisement and time of the election is only directory, perhaps. Evans v. Claiborne Co., 3 Hay., 29.

CHAPTER 3.

ELECTIONS BY THE PEOPLE.

Statutes repealed, revived, modified, and altered.—Acts of 1865, ch. 16; 1865-66, ch. 33; 1866-67, ch. 26, were repealed by Acts 1870, ch. 10, sec. 2, and sections 822 to 871, inclusive, of the Code of 1858 were, by section 3 thereof, reenacted and revived, except as therein altered or repealed; and said sections have since been altered, modified, or repealed as herein shown.—Ed.

8. [1150 (822) 1016]. Officers elected by the people.—The following officers are elected by the people: Governor, electors of president and vice-president; representatives in congress; United States senators; members of the general assembly; judges of all the courts in the state; attorneys for the state for the judicial circuits or districts; clerks of the circuit, criminal, and county courts; justices of the peace; sheriffs; county trustees; county registers; constables; and county tax assessors. (U. S. const., 12th am., art. 1, sec. 2, art. 1, sec. 3, pars. 1 and 3; art. 2, sec. 1, cl. 2; Tenn. const.,

art. 3, sec. 2; art. 2, secs. 3-7; art. 6, secs. 3, 4, 5, 13, 15; art. 7, sec. 1; Acts 1913, 1st ex. sec., ch. 8.)

9. [1151 (825c) 1017]. Regular election of judges, chancellors, state's attorneys, and judges of the supreme court.—On the first Thursday in August, eighteen hundred and seventy-eight, and forever thereafter every eight years, there shall be elected in this state, by the qualified voters, five judges of the supreme court of the State of Tennessee, and judges of such circuit and chancery and other courts as are or may be established by law; and an attorney for the state for each county or district for which a judge, having criminal jurisdiction, shall be provided by law. And in voting for said supreme judges, every voter shall prefix to the name of each of the three candidates the words "eastern," "western," or "middle" division, to denote the grand division of the state for which he desires each of the three candidates elected. Each candidate shall reside in [the grand division of] the state for which he is elected. And the voter shall also prefix to the name of each of the two other candidates on his ballot the words, "the state at large," to denote that they are to be elected for the entire state. Said two candidates shall not reside in the same grand division of the state. And the candidate receiving the highest number of votes for any one grand division of the state, and the two candidates receiving the highest number of votes for the "state at large," shall be declared to be the five judges of the supreme court of the State of Tennessee. (1870, ch. 23, sec. 3.)

Explanatory.—The matter in brackets in this section was printed in brackets in the published acts.—Ed.

10. [1152 (825d) 1018]. Duty of returning officers.—The commissioners of elections, or other officers holding said election, shall, within five days after such elections, make out and transmit to the secretary of state a true return of the number of votes received by each candidate for judge and attorney for the state. (1870, ch. 23, sec. 4; 1907, ch. 436; 1909, chs. 104, 273.)

11. [1153 (825e) 1019]. Secretary of state to compare and record votes; certificates; commissions; qualification by oath.—The secretary of state shall compare the number of votes received by each candidate for judge and attorney for the state, and shall enter the same in a well bound book kept for that purpose; and shall give the person receiving the highest number of votes a certificate of his election; and the governor shall thereupon issue commissions to each judge

and attorney for the state upon an estimate and certificate of the votes, as above prescribed. Said judges and attorneys for the state shall be sworn according to law, and then proceed to the discharge of the duties of the office to which they have been elected. (1870, ch. 23, sec. 5.) See Code, secs. 378-380, 1073—1081, and 1305.

1. **Return or certificate of election is only prima facie correct.**—The return of the election officer is not conclusive, but merely prima facie evidence of the right to the office, and may be rebutted by evidence. Dodd v. Weaver, 2 Snead, 671. The certificate of election is prima facie evidence of its own correctness, yet it may be falsified by the testimony of witnesses. Marshall v. Kerns, 2 Swan, 68, 71. The election return is sufficient evidence of the result, until the contrary is clearly made out by the contestant, upon whom the burden lies. McCraw v. Harralson, 4 Cold., 41.

2. **The commission or certificate is a nullity where the election is declared to be void.**—Where the election is declared to be void, the governor's commission to the candidate shown to be elected by the election returns cannot have any effect. Barry v. Lauck, 5 Cold., 588, 590, 591. The returning officer's certificate of election to one as sheriff, and his induction into office by the county court, will not affect the rights of the candidate shown to be actually elected, because the title to the office rests on the election and neither the certificate nor the induction into office can supply its place. State, ex rel., v. Wright, 10 Heis., 237, 253. See State, ex rel., v. Malone, 4 Thomp., 171.

3. **Judge's title is derived from election, and not from governor's commission which is only prima facie evidence.**—While it is the duty of the governor to issue commissions to the judges, as and when required by this section, and they are greatly useful as prima facie evidence of title, and also for protecting third parties under judicial acts performed by persons holding them, yet the commissions may be void because issued without authority; for the title comes from the people, through the election, and not through a commission of the executive, or other formality. State, ex rel., v. Malone, 4 Thomp., 149, 170, 171.

4. **Record need not show oath of attorney-general, when; recitation of oath is sufficient.**—In a criminal case, the record need not show that the attorney-general has taken the oaths prescribed by the constitution and laws; and, if it appears that he has taken the oath of office only, it will not be presumed that he did not take the oath to support the constitution of the state and that of the United States, as required. Staggs v. State, 3 Hum., 372, 373, 374; State v. Gouge, 12 Lea, 135. In such case, the recitation that he was "duly sworn as the law directs" is sufficient. Turner v State, 5 Pickle, 555.

12. [1154 (825f) 1020]. **Elections for various state and county officers, how often held.**—Elections for all the civil and judicial officers shall be held forever hereafter on the first Thursday in August next preceding the expiration of the respective terms of such judicial and civil officers, to wit: For judges of the supreme, circuit, chancery, and other courts, and attorneys for the state in each circuit or district, every

eight years; for justices of the peace, in each civil district in every county, every six years; for clerks of the circuit, county, and other courts, for register and county tax assessors, every four years; for sheriffs, county trustees, and constables, every two years, counting from the first Thursday in August, 1870, as to all, except the county tax assessors, whose election shall be on the first Thursday in August every four years, counting from the first Thursday in August, 1904. *Id.*, sec. 6; 1907, ch. 602, sec. 9; const., art. 7, sec. 5, and other provisions, *passim*.)

Terms of office of officers elected in 1870.—The last election before the adoption and establishment of the constitution of 1870 was held on the fourth Saturday in March, 1870, under Acts 1869-70, ch. 62. The terms of the officers elected at this election and those of the judges and attorney-generals held in May, 1870, under section 823 of the Code of 1858, and Acts 1869-70, ch. 28, sec. 7, were to be computed from the first day of September, 1870, as provided by the first section of the schedule to the constitution of 1870, as shown by note 1 thereunder, p. 619.—Ed.

13. [1155 (825g) 1021]. Computation of term; vacancy.—The term of each judicial and civil officer shall be computed from the first day of September next succeeding his election. No appointment or election, to fill a vacancy, shall be made for a period of time extending beyond the unexpired term. Every officer shall hold his office until his successor is elected or appointed and qualified. No special election shall be held to fill a vacancy in the office of judge or attorney for the state, but at the time herein fixed for the biennial election of civil officers; and such vacancy shall be filled at the next biennial election occurring more than thirty days after the vacancy occurs. (1870, ch. 23, sec. 7; const., art. 7, sec. 5.)

14. [1156 (825h) 1022]. Supreme judges, vacancy.—Any vacancy in the office of supreme judge shall be filled by a person residing in the grand division of the state in which the vacancy occurs. (1870, ch. 23, sec. 8.)

15. [1157 (825i) 1023]. Elections, by whom to be held.—All elections shall be opened and held by the officers, judges, and clerks of elections, appointed by the commissioners of elections, according to the rules, regulations, and restrictions required by law; and if any of said officers, judges and clerks shall fail to attend, other persons shall be selected to fill such vacancy by a majority of the election officers in attendance. (1870, ch. 23, sec. 9; 1907, ch. 436, secs. 9, 10, 11, 14; 1909, ch. 104.) See sec. 46.

16. [1158 (825, 825k) 1024]. **Elections for Governor and members of assembly.**—It shall be the duty of the several officers, judges, and clerks of elections, appointed by the commissioners of elections of the different counties in this state, to open and hold an election at the different voting places in each county, on the second Tuesday in November, 1870, and forever thereafter on the first Tuesday after the first Monday in November, every two years, and at the same places to elect a governor for the State of Tennessee and members of the general assembly thereof, and representatives in the congress of the United States; and at the same place and time, every fourth year from the year 1788, to elect electors for president and vice president of the United States. (1870, ch. 15, sec. 1; 1907, ch. 436, secs. 9, 10, 11, 14; 1909, ch. 104.)

17. [1159 (825l) 1025]. **To be according to existing or future laws.**—Said elections shall be held, the votes compared, due and correct returns thereof made out and transmitted, and certificates of election given to members elect of the general assembly, and commissions to the members elect in congress, in accordance with the laws now in force or hereafter passed. (1870, ch. 15, sec. 2.)

18. [1160 (826) 1026]. **Special elections.**—Special elections are to be held in the following cases:

(1) Whenever a vacancy occurs in the office of senator or representative to the general assembly, by reason whereof any district or county will be deprived of its full representation.

(2) When a vacancy occurs in the office of representative in congress, by which the state will be deprived of its full representation at any time congress may be in session prior to the next general election for that office.

(3) Whenever a vacancy in any office is required to be filled by election at other times than those fixed by the general elections.

(4) In such other cases as are or may be provided for by law.

See Code, sec. 1118, et seq. As to special elections for judge and district attorney, see Const., art. 7, sec. 5 (p. 486).

Elections must be authorized by statute.—The right to hold an election cannot exist or be exercised, without an express grant of power to do so by the legislature. *Brewer v. Davis*, 9 Hum., 208, 214.

19. [1161 (827) 1027]. **Of county officers.**—All special elections for county officers, authorized by law, shall be

ordered by the commissioners of elections of the county. (1907, ch. 436; 1909, chs. 104, 273.)

County judge is not county officer.—A county judge is not a county officer, within the meaning of this section. State, ex rel., v. Glenn, 7 Heis., 472, 486. See Code, sec. 386, and note 2; note 6 under sec. 385; Ledgerwood v. Pitts, 14 Cates, 607.

20. [1162 (828) 1028]. Of other officers.—All other special elections are to be ordered by the governor, who shall issue writs of election directed to the commissioners of elections of the counties in which such election is required to be held.

21. [1163 (829) 1029]. Writs of election, what to specify.—These writs shall specify the county or district in which, and the day on which, such election is to be held, the cause and object thereof, the name of the person in whose office the vacancy has happened; and, where the election is ordered in a district composed of several counties, the writ shall direct the election to be held on the same day in each county.

22. [1164 (830) 1030]. Notice of special election by governor.—The governor shall also give notice of any special election for representatives in congress, members of the general assembly, judges, or attorneys-general, by proclamation published in at least two newspapers, one at the seat of government, the other in the county or district in which the election is to be held, or in the nearest newspaper to such county or district. (1853-54, ch. 32, sec. 6.)

23. [1165 (831) 1031]. Notice by commissioners of elections; failure is a misdemeanor.—Whenever the commissioners of elections receive a writ of election directing a special election to be held, or receive notice of a special election by proclamation, they shall immediately give notice of the time, place, and object of such election, by publication in some newspaper in the county, if there be any published therein, and, if not, by notice at the courthouse door and at each voting place in their county; and any commissioners of elections failing to comply with the provisions of this section are guilty of a misdemeanor. (1907, ch. 436; 1909, chs. 104, 273.) See Code, secs. 37-39.

1. Notice is essential.—The required notice of a special election is essential to its validity; and a failure to give such notice renders the election in the county void. Barry v. Lauck, 5 Cold., 588, 591-594.

2. Notice must be given in all counties of a division or district.—The failure to give notice of a special election in one county of a di-

vision or district operates as a practical disfranchisement of the legal voters of the entire county, though an election is actually held in nine of the twelve civil districts in that county, and is such a substantial and material failure of the electoral franchise as compels the court to regard the election as a nullity throughout the entire district, and renders an election for chancellor a nullity throughout the entire division, where it appears that the voters who did not vote were more than sufficient to have changed the result, had they all voted one way. *Barry v. Lauck*, 5 Cold., 588, 591, 592, 594-599; *Nelson v. Sneed*, 4 Cates, 55; *Maloney v. Collier*, 4 Cates, 92, 93.

3. **Statutory provisions essential for ascertaining the will of the people are indispensable.**—Whatever statutory provisions are essential for ascertaining the will of the community upon a particular question are obviously indispensable. Whatever precautions prescribed by statute against mistake or fraud that are of such a nature that their omission in the particular instance has resulted in a fraud upon the electors, or has rendered the result of the election incurably uncertain, or the future omission of which, if permitted, must necessarily prove avenues of fraud, or tend to prevent a fair exercise of the franchise, or to render elections insecure and uncertain, must be held to be matter of substance, and essential to the validity of the election. *Barry v. Lauck*, 5 Cold., 593.

24. [1166 (832) 1032]. **Place of holding elections.**—Special elections shall be held and conducted, the returns thereof made and certified, certificates of election given, and in all other respects, unless otherwise expressly provided, [they] shall be regulated by the provisions of this title [Code, sections 1069-1377] in relation to general elections.

25. [1166al]. **Dates of election of United States senators at the regular elections in November.**—An election shall be held on the first Tuesday after the first Monday in November, A. D. 1916, for the purpose of electing a United States senator to succeed the present United States senator, whose term of office expires March 4, 1917; and that every sixth year thereafter an election shall be held on the first Tuesday after the first Monday in November for the election of a United States senator, and the term of office of the senator so elected shall commence on the fourth day of March next succeeding the time of his election. An election shall also be held on the first Tuesday after the first Monday in November A. D. 1918, for the purpose of electing a United States senator to succeed the present United States senator, whose term of office expires March 4, 1919; and every sixth year thereafter an election shall be held on the first Tuesday after the first Monday in November for the election of a United States senator, and the term of office of the senator so elected shall commence on the fourth day of March next

succeeding the time of his election. (1913, 1st ex. ses., ch. 8, sec. 1.)

26. [1166a2]. Election at next regular biennial election in November to fill vacancy.—Whenever any vacancy shall occur in the office of United States senator, his successor shall be elected at the next regular biennial election in November, and shall hold office until the term for which his predecessor was elected shall have expired. (1913, 1st ex. ses., ch. 8, sec. 2.)

27. [1166a3]. Vacancy when congress is in session may be filled by appointment of governor until next regular biennial election in November.—Whenever any vacancy in the office of United States senator occurs by which the state will be deprived of its full representation at any time congress may be in session, prior to the next general biennial election, then, in such cases, the governor of the State of Tennessee is hereby authorized to fill said vacancy by appointment, and such appointee shall hold office until his successor is elected and qualified at the next regular biennial election in November after said appointment. (1913, 1st ex. ses., ch. 8, sec. 3.)

28. [1166a4]. Names of candidates for United States senator to be placed on ballots.—The names of candidates for office of United States senator shall be placed on the election ballots along with the names of the candidates for the various other offices to be elected at the biennial November election. Any candidate for United States senator shall be entitled to have his name put on the ballots to be used in said election in the same manner as is now provided by law for the placing of the names of candidates upon ballots. (1913, 1st ex. ses., ch. 8, sec. 4.)

29. [1166a5]. Elections for United States senator under general election laws.—All elections for the office of United States senator shall be held under the general election laws of this state. (1913, 1st ex. ses., ch. 8, sec. 5.)

30. [1166a6]. New election, if there be a tie in the election of United States senator.—Whenever there shall be a tie vote in any election for United States senator, said election shall be void; and the governor shall thereupon immediately issue a writ directing the holding of a new election, the date of which election to be named in said writ, and shall not be less than thirty nor more than forty days after the election so declared to be void. (1913, 1st ex. ses., ch. 8, sec. 6.)

31. [1166a7]. Ballots cast for United States senator to be counted and results certified—The ballots cast for candidates for United States senator shall be counted by and the results certified by the officers holding the election, along with the votes cast for other candidates under the existing general election laws. (1913, 1st ex. ses., ch. 8, sec. 7.)

32. [1166a8]. Election returns to be made by commissioners of elections—On the Monday next following the election, the election commissioners shall make out triplicate returns of the number of votes received by each candidate for United States senator, and forward one copy by mail to the governor, another copy by different mail to the secretary of state, and deposit the third copy in the office of the county court clerk. (1913, 1st ex. ses., ch. 8, sec. 8.)

33. [1166a9]. Governor, secretary of state, and attorney-general shall compare the votes and declare the results; certificates of election—As soon as said election returns are received, the governor, the secretary of state, and the attorney-general shall, in the presence of such candidates as choose to attend, compare the votes and declare the person receiving the highest number of votes duly elected. The person receiving the highest number of votes shall be entitled to a certificate of election, signed by the governor, which certificate of election shall be directed to the president of the senate of the United States, under the seal of the state, and countersigned by the secretary of state of the state. (1913, 1st ex. ses., ch. 8, sec. 9.)

CHAPTER 4.

ELECTORS.

34. [1167 (833a) 1033]. Persons entitled to vote—Every person of the age of twenty-one years, being a citizen of the United States and a resident of this state for twelve months, and of the county wherein he may offer his vote for six months next preceding the day of election, shall be entitled to vote for members of the general assembly and other civil officers for the county or district in which he may reside. (1870, ch. 10, sec. 1; 1873, ch. 1; 1919, ch. 139; 19th am to U S const., and certified as adopted and proclaimed as ratified, Aug. 26, 1920.)

Limited suffrage was granted to women by Acts 1919, ch. 139, to

vote in certain elections, and this statute was construed in several aspects, in the case of *Vertrees v. Board*, 14 Thomp., 645.

35. [1168 (833d) 1034]. Vote in home district or ward; violation a misdemeanor.—All voters in this state shall be required to vote in the civil district or ward in which they reside, except as hereinafter provided; and any person violating these provisions shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten nor more than twenty-five dollars. (1870, ch. 10, sec. 4.) See secs. 36, 38.

1. Voters to vote in nearest voting precinct in what counties.—By Acts 1919 (Private), ch. 181, it is provided that voters shall vote in their nearest voting precinct in counties having a population of not less than 39357 nor more than 39,500, by the federal census of 1910, or by any subsequent federal census, excepting incorporated towns in said counties. Under the federal censuses of 1910 and 1920, and under *Hall v. State*, 16 Cates, 235, 238, 241-243, 246, 247, said act is applicable to Madison county alone.

2. Voting out of one's ward, though in his district, is a misdemeanor.—The intention of the statute is that each voter shall cast his vote within his own civil district, where a voting place is provided for the district, and in cities or towns where the civil district may be divided into wards, that he shall vote in his own ward, except in cases especially provided for in the next following section, and a violation of the statute is a misdemeanor. *Green v. State*, 1 Shannon's Cases, 456.

3. Soldiers residing in the national home cannot vote, when.—The reservation of the right of the inmates of the national home for disabled volunteer soldiers near Johnson City, in Washington county, in this state, to vote in all elections in this state, in the place where said home is located, upon their complying with the requirements of the laws regulating elections, made in section 2 of chapter 98 of Acts 1901, ceding to the United States exclusive jurisdiction over the land on which said home was erected, is unconstitutional, invalid, and non-effective. *State, ex rel., v. Willett*, 9 Cates, 334, 342—350. See *Rhinehart v. State*, 13 Cates, 435; *Divine v. Bank*, 17 Cates, 106.

The inmates and employees working and eating in such soldiers' home, regularly and irregularly, but residing with their families on the outside, may vote, if otherwise qualified. *State, ex rel., v. Willett*, 9 Cates, 334, 348, 349, 351.

36. [1169. 1035]. Exceptions.—In the following cases, electors may vote out of the ward or district in which they reside:

(1) Judges, jurors, litigants, and witnesses attending court may vote in any ward or district in which the court is held. (1870, ch. 10, sec. 4.)

(2) Officers holding elections may vote in any ward or district in which they may hold an election. (Ib).

Repealed by implication.—This paragraph is thought to be repealed

by implication by Acts 1907, ch. 436, secs. 13 and 14, compiled in sections 95 and 96 of this compilation, requiring officers of elections to be residents and citizens of the ward or district or precinct in which the voting place for which they are appointed is situated.—Ed.

(3) Candidates for county and state offices or for congress may vote in any ward or district in their county in which they may be on the day of election. (1877, ch. 63.)

(4) If, from any cause, there should be a failure to hold an election in any civil district or ward, the voters thereof may vote in any other district or ward in their county or town. (1870, ch. 10, sec. 4.)

(5) All rural route mail carriers may vote at the precinct or voting place at which they may be, in the discharge of their duties, in any and all elections, when in the judgment of the election officers they are otherwise qualified to vote. (1915, ch. 22.)

37. [1170 (834) 1036]. **Who not to vote.**—No person shall vote at any election in this state who has been convicted of bribery, or the offer to bribe, of larceny, or any other offense declared infamous by the laws of this state, unless he has been restored to citizenship in the mode pointed out by law.

38. [1171 (835) 1037]. **Place of voting.**—No person's vote shall be received out of the county in which he resides. But if any person go out of his county for a definite purpose, not intending to change his home, and returns on or before the day of election, he shall be entitled to vote; and when any person has a fixed residence in a county, the same shall continue to be his residence, until he changes the same to some other county or state. (1841-42, ch. 31, sec. 16.) See sec. 36.

39. [1172 (836) 1038]. **Electors' privileges.**—Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest or summons, during their attendance at elections, and in going to and returning from them.

See Const. art 4, sec. 3, and notes 3 and 4 (p. 378).

40. [1173 (836a) 1039]. **Contracts in restraint of the elective franchise.**—The laws of this state shall guarantee to every qualified voter the right to go to the polls and vote, without fear or molestation. No person shall be allowed to make contracts with work hands or others in their employ that will, or is intended to, keep them from going to the

polls on election days; nor shall they, or any party, have the legal right to claim that any contract has been violated because parties or individuals in their employ left their work or lands to go and vote on election days in their county. (1867-68, ch. 67, sec. 10.)

41. [1174 (836b) 1040]. **Candidate's oath abolished.**—No candidate for any official position in this state shall be required to take and subscribe to any oath; and all laws requiring any oath are hereby repealed. (1869-70, ch. 115, sec. 1.)

See const., art. I, sec. 5; art. I, secs. 1, 2, 3; art. IO, secs. 3, 5.

CHAPTER 5.

ELECTION PRECINCTS.

42. [1175 (837) 1041]. **Place of holding elections.**—The places of holding elections shall be in each civil district, at some convenient locality, to be designated by the county court at least six months before the election, and entered of record. (1821, ch. 27, sec. 1.) But see sec. 45, and note.

43. [1176 (838) 1042]. **Courthouse.**—The courthouse of the county is always a place of voting, although other places may be established in the civil district in which the courthouse is situated. (1837-38, ch. 23.)

44. [1177 (838a) 1043]. **Numerous precincts.**—The county court may establish more than one voting place in any civil district, whenever the public convenience shall require the same. (1869-70, ch. 66, sec. 1.) But see secs. 35, 45, and note.

Voting places in Greene county changed by legislative acts.—By Acts 1909, ch. 203, the voting place in the Fourth civil district of Greene county, Tennessee, was changed from Phillips' schoolhouse to Mohawk.

By Acts 1909, ch. 291, the voting place of the Sixteenth district of Greene county, Tennessee, was changed from Cedar Grove to Union Temple schoolhouse.

45. [1177a1]. **Registration and voting divisions may be established by commissioners of elections, when.**—Whenever two or more civil districts have been consolidated into one civil district or the parts of one or more civil districts added to another civil district, or where a civil district lies partly within and partly without an incorporated town, city, or taxing district, and such part thereof as is not divided into

wards [,they] may be divided and designated into as many "registration and voting divisions" of the civil districts by the commissioners of elections as may be necessary for the convenience and accessibility of the voters of such civil districts for the registration and voting of such voters as reside in said "registration and voting divisions" of civil districts, and two registrars shall be appointed for each "registration and voting division" of civil districts, who shall be furnished books, stationery, register the voters residing in said registration and voting divisions of civil districts, and do all things provided by law to be done as other registrars. When the registration and voting divisions have been defined, they shall not be altered, except upon a petition signed by fifty free-holders of such divisions and not until after thirty days' notice published once a week for four weeks in some daily or weekly paper having a general circulation in the county and also posted at the courthouse door for thirty days, setting forth the proposed changes. (1905, ch. 254; 1907, ch. 436, sec. 19.)

See secs. 42-44.

Power to establish voting places.—The power conferred upon the commissioners of elections, by section 45, to designate and define "registration and voting divisions" of civil districts, in the special instances mentioned, does not interfere with the general power and jurisdiction conferred upon the county court, by sections 42-44, to establish voting places in the civil districts. This is certainly true in all cases other than the special instances given in section 45. Whether the power and jurisdiction of the county court is interfered with or curtailed in the special instances mentioned is a question more difficult of solution, and one worthy of consideration. See Code, sec. 1654, and note; Harmon v. Taylor, 15 Lea, 535, 536, 537; Ledbetter v. Turnpike Co., 2 Cates, 92.

CHAPTER 6.

OFFICERS OF POPULAR ELECTIONS.

46. [1178 (839) 1044]. Who to hold elections.—The judges, clerks, and officers of election, appointed by the commissioners of elections, or, in case of a vacancy, by a majority of themselves, shall hold all popular elections. (1796, Mar. ses, ch. 9, sec. 1; 1835—36, ch. 2, sec. 1; 1907, ch. 436, secs. 9, 10, 11, 14; 1909, ch. 104, secs. 1, 2.) See sec. 15.

1. Sheriff's appointment of election officers is unlawful and void.—Under the former law empowering and requiring the sheriff, by himself or his deputies, to hold all popular elections, except when he was a candidate, the sheriff's appointment of special deputies for an

election at which he was a candidate for reëlection, though done under legal advice, was unlawful and unwarranted, and was absolutely void, and conferred no authority whatever upon such deputies. *Moore v. Sharp*, 14 Pickle, 491, 507-510.

It would necessarily follow from this decision that the sheriff's appointment of special deputies for any election under the existing law, when he is a candidate, would be absolutely void, and would confer no authority whatever upon such special deputies.—Ed.

2. **Candidacy that renders officer incompetent must be at time of election.**—If an officer of an election is not a candidate at the time of the election and is not voted for, he is qualified to hold the same, though he may have been a candidate a few days before. *McCraw v. Harralson*, 4 Cold., 34, 40, 41.

47. [1179 (840) 1045]. In part cut off to form a new county.—In all cases not otherwise provided for, when fractions of counties have been cut off to establish a new county, the commissioners of elections of each old county shall, till the next apportionment of representatives, hold all elections for governor, members of congress, and of the general assembly; and the commissioners of elections of each old county shall appoint inspectors of said elections. See const., art. 10, sec. 5 (p. 517); sec. 101, post.

48. [1180 840a] 1046]. Citizens in new counties may vote therein, after old counties have been redistricted, when.—In all cases where, by law, new counties are required to vote with the old counties from which they were taken, and said old counties have been redistricted, and under said division into districts, no district is laid off in the new counties, the voters of any fragment of the old counties so taken off shall vote in the district laid off from said portion of the old counties by the county court of the new county; and the officers required by law to open and hold elections shall open and hold the same at the places required by law. (1861, 1st ex. ses., ch. 10, sec. 5.)

1. **Constitutionality of this section.**—The statute compiled in this section seems to be unconstitutional to the extent that it may operate to authorize the citizens in a new county to vote in the districts of said county "for members of congress, for governor and for members of the general assembly until the next apportionment of members to the general assembly," because the constitution (art. 10, sec. 5) requires the citizens who may be included in any new county to vote with the county or counties from which their territory was taken, for such officers. This section clearly violates said constitutional provision in so far as it operates to authorize the citizens in the new counties to vote in the districts of said counties before the next apportionment of members to the general assembly.—Ed.

2. **Section 1181 of the Code of 1896 is superseded by section 83 of this compilation.**—Ed.

3. Section 1182 of the Code of 1896 is superseded by section 84 of this compilation—Ed.

49. [1183 (842) 1049]. Appointment in case of no appointment or failure to serve.—If the commissioners of elections fail to make the appointment, or those appointed refuse to serve, the sheriff, with the advice of three justices, or, if none be present, three respectable freeholders, shall, before the beginning of the election, appoint said inspectors or judges. (1796, Mar. ses., ch. 9, sec. 1; 1907, ch. 436, sec. 14.) See sec. 96.

Informalities in the appointment of inspectors or judges of elections will not vitiate the election.—This section is merely directory. Its object is to secure just and competent inspectors; and when that end is attained, without prejudice to the contestants, the want of a strict conformity to the law constitutes no ground for declaring the election void. McCraw v. State, 4 Cold., 34, 42, 43 (headnote 3); Cook v. State, 6 Pickle, 414.

50. [1184 (843) 1050]. Who may act as judges.—If the election officers, whose duty it is to attend at a particular place of voting under the law, fail to attend, any justice of the peace present, or, if no justice of the peace be present, any three freeholders may perform the duties of appointing the inspectors or judges, or, in case of necessity, may act as officers or inspectors. (1907, ch. 436.)

Question whether sections 49 and 50 are in force.—Since the enactment of the statute compiled in sections 74 to 101, it is questionable whether sections 49 and 50, even as modified herein, are in force. Section 49 makes provision for filling vacancies where part of the election officers failed to attend; but there is no provision in that section, and there seems to be none in said act, for the appointment of election officers where the commissioners of elections have failed to appoint them, or where all those appointed fail to attend. Therefore, it may be that sections 49 and 50, and especially 50, are in force for the appointment of election officers, in the contingency that the commissioners of elections have appointed none, or all those appointed fail to attend.—Ed.

51. [1185 (844) 1051]. Oath of judges.—The officer or person holding any election, or some justice of the peace, before the opening of the polls, shall administer to the judges appointed to hold the election the following oath: "You do solemnly swear that, as judge of this election, you will suffer no one to vote, whom you know, of your own knowledge, or who appears, either by his own oath or by the testimony of others, not to be a qualified voter; that you will not suffer the ballot box to be out of the presence or sight of at least two of your number until every vote is

counted out; that you will faithfully and impartially conduct yourselves as judges of this election; and that you will, in all respects, perform the duties imposed upon you by law as judges and inspectors of this election. So help you God." (1796, Mar. ses., ch. 9, sec. 8; 1809, April ses., ch. 36; 1837-38, ch. 185; 1841-42, ch. 31, sec. 5; 1879, ch. 191.)

1. Not repealed.—Section 844 of the Code of 1858, compiled herein as section 51, was not repealed by Acts 1865, ch. 16, sec. 7, either in terms or by implication. McCraw v. Harralson, 4 Cold., 43.

2. Irregularities in qualification will not vitiate election.—Irregularities in the qualification of the inspectors of the election do not render the election void; for strictness in technical conformity to the requirements of the statute would defeat rather than uphold popular elections. McCraw v. Harralson, 4 Cold., 34, 37, 42, 44 (headnote 4); Cook v. State, 6 Pickle, 414.

52. [1186 (845) 1052]. Oath of clerks of election.—The clerks of the different elections shall take the following oath: "You do solemnly swear that you will faithfully, truly, and impartially discharge your duty as clerks of this election. So help you God." Which oath shall be administered by the person administering the oath of office to the judges or inspectors of the election, or by one of the judges themselves. 1796, Mar. ses., ch. 9, sec. 8; 1841-42, ch. 31, sec. 11.) See Acts 1869-70, ch. 115, sec. 2.

53. [1187]. Compensation for holding elections.—Judges, clerks, and officers holding [a] general election in the several counties of this state shall each be entitled to and receive for said service one dollar per day, for one day only. (1887, ch. 62, sec. 1.)

Compensation of election officers in certain counties.—By Acts 1919, Private, ch. 496, it is provided that all election officers, judges, clerks, registrars, and assistant registrars in elections in Washington county shall receive two dollars per day.

By Acts 1921, Private, ch. 433, it is provided that the election officers, judges, clerks, registrars, and assistant registrars shall receive two dollars and fifty cents per day in Wilson county.

By Acts 1921, Private, ch. 702, sec. 2, it is provided that each election officer, judge, clerk, registrar, or marker, when the polls stay open until seven o'clock p.m., shall receive three dollars for each election in any ward, district, or precinct in counties having a population of not less than 112,000 or not more than 115,000 by the federal census of 1920 or any subsequent federal census. Under the federal census of 1920, said act is applicable in Knox county alone.—Ed.

54. [1188]. Commissioners of elections to make list of those holding elections; trustee's warrant for their compensation.—It shall be the duty of the commissioners of elec-

tions of each county, when the returns of an election from the several civil districts and wards of their county are deposited with them, to make out a complete list of the judges, clerks, and officers holding such election, and deliver such list to the judge or chairman of the county court, who shall issue his warrant in favor of each of said judges, clerks, and officers for the sum of one dollar, to be paid by the trustee of the county out of any money in his hands, collected for county purposes. (*Id.* sec. 2; 1907 ch. 436.) See secs. 74-101.

55. Publication and notice of appointment of election officers; form of notice prescribed.—Fifteen days before the date fixed for the holding of any legalized election in this state, where it is the duty of the county board of commissioners of elections to appoint the officers who shall hold such election, the secretary of such board shall not only publish the list of election officers selected in the manner now provided by statute, but he shall also notify each officer selected of his appointment by either letter or postal card and shall use substantially the following form of notice:

To.....

You are hereby notified that you have been appointed by the commissioners of elections as a.....(state in what capacity, whether as judge, clerk, etc.), to hold the election for, at precinct....., ward....., or.....civil district on the.....day of..... between the hours ofa. m. and.....p. m., and fail not under penalty.

This.....day of....., 192...

.....
Secretary of Commissioners of Elections.

(1919, ch. 45, sec. 1.)

56. Election officer's failure to discharge duties is a misdemeanor; fine; inquisitorial power.—Any person so notified of his appointment who fails to appear at the time and place designated in said notice, and discharge the duties of the office to which he has been appointed, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than twenty-five dollars nor more than fifty dollars, and the grand jury shall have inquisitorial power over all such offenses, and shall inquire into and make presentments thereof. (*Ib.*)

57. What constitutes defense to prosecution; false state-

ment is perjury.—But it shall be a good defense, however, for any person who has been so prosecuted, who shall show to the satisfaction of the court that on the date fixed for said election, the state of his own health, or that of some member of his family was such as to require his absence or that some pressing or urgent business engagement, the neglect of which would cause irreparable loss, or the public service would have been materially injured. Any false statement under oath, knowingly made as to the existence of either of these defenses, shall constitute the offense of perjury. (Ib.)

58. Election officers to certify delinquents to chairman who shall furnish their names to the grand jury.—It shall be the duty of the officers present and holding the election, to certify to the chairman of the board of election commissioners of the county, the names of those who fail to appear at the time and place named in said notice and discharge the duties of the office to which they have been appointed. And it shall be the duty of the chairman of said board to furnish the first grand jury sifting in the county after the date of holding such election, with the names of the delinquent officials. (1919, ch. 45, sec. 2.)

59. Delinquent may file affidavit with chairman showing defense in section 57, and he shall file it with his recommendation with grand jury.—Should such delinquent official, on or before the convening of such grand jury, file with said chairman his affidavit, showing that the state of his own health or that of some member of his family was such as to require his absence from said election; or that some pressing or urgent business engagement, the neglect of which would cause irreparable loss, or that the public service would have been materially injured by his attendance upon such election, it shall be the duty of said chairman to file such affidavit together with his recommendation in the premises, with the grand jury and upon the receipt of which it may then determine whether or not it will exercise its inquisitorial power as to such case. (Ib.)

CHAPTER 7.

STATE BOARD OF ELECTIONS.

60. [1188a1]. State board of elections created and to be elected.—There shall be elected by the joint vote of both houses of the general assembly a board of three persons to

be known as the "State Board of Elections," which shall have and exercise all the powers conferred upon said board by this chapter. (1907, ch. 435, sec. 1; 1909, ch. 103, sec. 1.)

1. Acts 1909, ch. 103, is not unconstitutional for irregularities in its passage.—Said act, amending Acts 1907, ch. 435, and compiled in this article, is not unconstitutional for any ground of attack made upon the regularity of its passage, or for alleged irregularities occurring in the journal entries, as shown in *Richardson v. Young*, 14 Cates, 471, 566-569, as appearing in headnotes 20-22. See Const., p. 260, note 3; p. 261 note 4; p. 264, note 21.

2. This statute is not unconstitutional in authorizing the election by the legislature, instead of appointment by the governor.—The power of election or appointment to office is a political power, not inherently belonging to any department of the government, and the power of appointment to office, not otherwise vested, may be exercised by the legislature, under the proper construction and practice of the constitution. Therefore, this statute authorizing the election of the state board of elections by the legislature, instead of their appointment by the governor, is not for that reason unconstitutional. *Richardson v. Young*, 14 Cates, 471, 504-523 (headnote 6). On the general principle, see *Telephone Co. v. Telephone & Telegraph Co.*, 17 Cates, 279; *Prescott v. Duncan*, 18 Cates, 147; *State, ex rel., v. Baseball Club*, 19 Cates, 303, 305; *Railroad v. Transportation Co.*, 1 Thomp., 289; *McCamey v. Cummings*, 3 Thomp., 502, 503.

For the reasons by which this conclusion was reached, see said headnote 6 on page 473 of 14 Cates; Const., p. 484, note 6.

3. Election by joint convention of the general assembly.—The requirement of this statute that the state board of elections shall be elected "by the joint vote of both houses of the general assembly" clearly authorizes a joint convention of the members of the general assembly for such election purposes. *Richardson v. Young*, 14 Cates, 471, 537, 538 (headnote 16). See Const., art. 7, sec. 3 (p. 481), and note 6 (p. 482).

4. Legislature may appoint to office by legislative act, or in joint session, where not otherwise provided by the constitution.—See Const., art. 7, sec. 4 (p. 483), and note 6 (p. 482).

5. Question whether the constitutional quorum of each house of the general assembly applies to the joint convention of both houses. Is reserved, and not decided, but the negative is indicated.—See Const., art. 2, sec. 11, and note 3 (p. 215).

6. Question whether election by joint vote of the general assembly was invalid for want of a constitutional quorum of the senate was reserved, because cured by appointment under section 63. See Const., p. 482, note 7.

61. [1188a2]. Not more than two from the same political party.—Not more than two of the three members of the state board of elections shall be of the same political party, and both the representatives of the majority and minority parties shall be bona fide members of the party they are appointed to represent, and any two members of said board shall con-

stitute a quorum for the transaction of business. (1907, ch. 435, sec. 2.) See sec. 71.

62. [1188a3]. To be elected by the legislature, when and how.—The members of the first state board of elections shall be elected prior to the first Monday of April, 1909, upon a date to be fixed by joint resolution of the general assembly, and thereafter, during each biennial session of the general assembly, one member of such board shall be elected on such date, prior to the first Monday of April, as may be fixed by joint resolution of both houses of the general assembly. (1907, ch. 435, sec. 3; 1909, ch. 103, sec. 2.)

1. Provision requiring day of election of state board of elections to be fixed by joint resolution is not mandatory, but directory; and the governor's veto is ineffective.—See Const., p. 484, note 8.

2. Governor's veto of a joint resolution fixing date of election of officers by the general assembly does not affect the resolution or the election under it.—See Const., art. 3, sec. 18 (p. 372), and note 2 (p. 373).

3. Presentment of resolution fixing date of election by general assembly to the governor, and his veto thereof, cannot affect the resolution or the election under it.—See Const., art. 3, sec. 18 (p. 372), and note 3 (p. 373).

63. [1188a4]. Terms of office; vacancies to be filled, how.—The terms of office of the members of the state board of elections first elected as hereinbefore provided shall be for two, four, and six years, respectively, from the first day of April, 1909. The terms of each member of the first board shall be fixed when he is elected by joint vote of the general assembly as hereinbefore provided, and thereafter, the term of the member elected at each recurring biennial session of the general assembly shall be for six years from the first Monday of April succeeding his election. All members of said state board of elections shall continue in office until their successors are elected and qualified, and all elections of successors to the first board, or to fill vacancies in that or any subsequent board, shall be bona fide members of the same party to which the member whose successor is to be elected or the member causing the vacancy belonged. All vacancies shall be filled as in the first instance by joint vote of the general assembly, except vacancies occurring when the general assembly is not in session, when if the office of only one member is vacant an appointment to fill such vacancy shall be made by the remaining members of the board within thirty days after the vacancy occurs; and, provided, further, that in the event the remaining commissioners fail

to fill the appointment within the time mentioned, the same shall be filled by the secretary of state, comptroller, and treasurer, or a majority from the same party in which the vacancy occurred, to hold until the convening of the general assembly; but if there be more than one vacancy on said board, the same shall be filled by appointment of the secretary of state, comptroller, and treasurer, or a majority of those officers. (1907, ch. 435, sec. 4; 1909, ch. 103, sec. 3.)

1. Vacancies in state board of elections may be filled by secretary of state, comptroller, and treasurer, when.—Under this section, the comptroller, secretary of state, and treasurer are authorized to fill two or more vacancies in the state board of elections during the recess of the legislature, without regard to the time when the vacancies occurred, whether during the recess or while the legislature was in session. Richardson v. Young, 14 Cates, 471, 550-565 (headnote 18). See Prescott v. Duncan, 18 Cates, 147.

2. Question of doubt as to power to fill vacancies would be resolved in favor of the power.—If the question was one of doubt about the power of the comptroller, secretary of state, and treasurer to fill vacancies in the offices of the members of the state board of elections, occurring during a session of the legislature and left unfilled by that body, public policy and the effective administration of the law would require the doubt to be resolved in favor of the power to appoint. Richardson v. Young, 14 Cates, 471, 564 (headnote 19).

64. [1188a5]. Compensation; oath; qualification; organization.—The members of said state board of elections shall receive as compensation three hundred dollars per annum each, payable quarterly, and the members of the said state board of elections shall take and subscribe to an oath before any state officer authorized to administer oaths to discharge faithfully and honestly the duties of their office, which oaths so taken and subscribed shall be filed in the office of the secretary of state, and it shall be the duty of the members of said state board of elections to qualify within ten days after their appointment and organize by the selection of one of their number as president and another of their number as secretary; and the failure on the part of any member of said state board of elections to qualify as above provided shall in all cases vacate the appointment of such member. (1907, ch. 435, sec. 5.)

65. [1188a6]. Expenses limited to \$250 per annum.—The said state board of elections shall be allowed the sum of two hundred and fifty dollars per annum for stationery, postage, and expenses incidental to the conducting of the business of said board, which shall be payable upon voucher or vouchers signed by the secretary and countersigned by the president of the state board of elections. (1907, ch. 435, sec. 6.)

66. [1188a7]. Meetings to be held at the capitol; how called.—All meetings of said state board of elections shall be held at the state capitol, in Nashville, in such room as may be provided for their use by the superintendent of the capitol, and no meeting, except for organization and an adjourned meeting for the appointment of commissioners of election [elections] shall be held, except upon five days' written notice to each member of said state board of elections; but meetings may be called at any time by the president or by any two members; provided, a requisite notice as hereinbefore required shall be given. (1907, ch. 435, sec. 7.)

67. [1188a8]. To appoint commissioners of elections for each county.—Said state board of elections shall select and appoint on the second Monday in May, 1909, or as soon thereafter as practicable, and on second Monday in May every two years thereafter, three commissioners of elections from each county in the state. (1907, ch. 435, sec. 8; 1909, ch. 103, ses. 4.) See sec. 77.

68. [1188a9]. Not more than two commissioners of elections to be of the same political party; quorum.—Not more than two of said commissioners [of elections] shall be of the same political party, and the representatives of the majority and minority parties shall be bona fide members of the party they are appointed to represent, and any two members of said board shall constitute a quorum for the transaction of business. (Ib.) See sec. 76.

69. [1188a10]. Each member of state board may appoint one commissioner of elections for each county.—Each member of the state board of elections herein provided for shall have the right and the power to designate and appoint, without the consent of his associates, one of said commissioners of elections for each county. (Ib.)

70. [1188a11]. Removal of commissioners of elections; vacancy to be filled by members originally appointing.—Said state board of elections shall have full power to remove any commissioner of elections for cause or failure to perform his duties, and the vacancy thereby caused shall be filled by that member of the state board of elections who in the first instance appointed the commissioner so removed. (Ib.) See sec. 78.

71. [1188a12]. Minority party is defined.—By minority party is meant the party polling in the State of Tennessee the

second highest number of votes for presidential electors at any presidential election immediately preceding the appointment of officers under this chapter. (Ib.) See secs. 61, 84, 90, 94.

Governor's appointees under former statute cannot raise question as to constitutionality of this amendatory statute, when.—The governor's appointees as members of the state board of elections under Acts 1907, ch. 435, cannot, in proceedings to establish their right to the offices as against the persons holding said offices under this amendatory statute (Acts 1909, ch. 103), demand or call for a determination of the question as to the constitutionality of the third and fourth sections of such amendatory statute, compiled in sections 63 and 67 to 71, which were assailed upon the ground that they imposed a political test as a qualification for office, in violation of the constitution (art. 1, sec. 4) prohibiting a political test, other than an oath to support the federal and state constitutions, as a qualification for office, where the alleged unconstitutionality of said sections, if conceded, would not render the whole amendatory act void, but only the said sections as separate parts of the act; for such contesting parties are not interested in these particular amendments as taxpayers, because no burdens are imposed by them; nor as citizens, because they are not affected in any way not common to all the citizens of the state. Richardson v. Young, 14 Cates, 471, 522-524 (headnotes 8 and 9), citing and approving Patton v. Chattanooga, 24 Pickle, 97, on the last point in this note; Palmer v. Express Co., 2 Thomp., 149; McCamey v. Cummings, 3 Thomp., 494, 505, 506 (headnotes 4-6); note 2 under sec. 3273a120 of the Code.

72. [1188a13]. Commissioners of elections for counties to be commissioned by state board; records; their oaths.—Said state board of elections shall issue commissions of appointment to the various commissioners of election [elections], which commissions shall be signed by the president and countersigned by the secretary of said state board of elections, and a record [shall] be kept by said state board of elections of all commissions so issued, with the full names of said commissioners of election [elections], their postoffice addresses, the name [names] of the chairmen and secretaries of said commissioners on [in] each county, the dates of their appointment, and their political affiliation, and the records of all vacancies; and the oaths subscribed by said commissioners of election [elections] shall likewise be kept in the records of said state board of elections. (1907, ch. 435, sec. 9.)

73. [1188a14]. State board to keep records as to where the various election laws are applicable.—Said state board of elections shall cause to be compiled and kept among their records a complete list of all counties, towns, cities, and civil districts within the state which are now or may hereafter be under the state laws pertaining to the registration of voters,

and of all counties, towns, cities and civil districts where the uniform Australian ballot is now or may hereafter by law be in use in the state, and also shall cause to be compiled a list of all counties, towns, cities, and civil districts where the three-by-seven ballot is now or may hereafter be in use under the law. (1907, ch. 435, sec. 10.)

1. **This section is repealed as to records of ballot laws.**—By Acts 1921, ch. 117, the provision of this section requiring records to be kept as to the ballot laws was impliedly suspended, but not as to the registration laws.—Ed.

2. **Acts 1913, ch. 37, attempting to amend the acts compiled in this chapter is unconstitutional.**—Said amendatory act was held to be unconstitutional, because the house journal showed the absence of a constitutional quorum, when the house attempted to pass the bill over the veto of the governor, a fatal defect, which was not cured by the subsequent passage of said bill, in the house, over said veto, when a quorum was present, for the reason that the bill was not subsequently sent to the senate, and there passed over the said veto. The passage of said bill, in the senate, over the said veto, after its said first and void attempted passage in the house and before its second and valid passage in the house, was held to be ineffective, upon the ground that the constitutional order in which a vetoed bill shall be reconsidered and passed over the governor's veto is mandatory. *Webb v. Carter*, 2 Thomp., 182, 186-248; *Todtenhausen v. Knox Co.*, 5 Thomp., 689. See Const., p. 273, note 7; p. 373, notes 4-6.

CHAPTER 8.

COUNTY COMMISSIONERS OF ELECTIONS.

74. [1188a15]. **Commissioners of elections for each county to be appointed.**—For and in each and every county in the state, there shall be appointed by the state board of elections a board of three persons, to be known as "Commissioners of Elections." (1907, ch. 436, sec. 1.)

75. [1188a16]. **Their qualifications.**—All the three commissioners shall be qualified voters of the county for which they are appointed and men of approved character, and shall have been residents of the county for which they are appointed for at least five years before their appointment. (1907, ch. 436, sec. 2.)

76. [1188a17]. **Not more than two by same political party; quorum.**—Not more than two of the three commissioners constituting the board shall be of the same political party; provided, however, that any two of said commissioners shall constitute a quorum for the transaction of business. (1907, ch. 436, sec. 3.) See sec. 68.

77. [1188a18]. Appointment to be made, when.—The said commissioners of elections shall be appointed on the second Monday in May 1907, or as soon thereafter as practicable, and on the second Monday in May every two years thereafter. (1907, ch. 436, sec. 4.) See sec. 67.

78. [1188a19]. Term of office; vacancies to be filled, how.—Said commissioners shall hold their office for a term of two years, and until their successors are appointed, and any vacancy shall be filled by the state board of elections by appointment. (1907, ch. 436, sec. 5.) See sec. 65.

79. [1188a20]. No compensation, except what the county court may allow.—Said commissioners of elections shall serve without compensation: provided, however, that the county court of each county shall have the right to appropriate out of the county revenue such amount, if any, as it deems said commissioners of elections are entitled to. (1897, ch. 15; 1907, ch. 436, sec. 6.)

80. [1188a21]. Oath; qualification; organization; chairman; secretary.—Before entering upon the duties of their office, said commissioners of elections shall take and subscribe to an oath before any officer authorized to administer oaths in the county for which said commissioners are appointed to discharge faithfully and honestly the duties of their office; and it shall be the duty of said commissioners of elections to qualify within twenty days after their appointment and organize by the selection of one of their number as chairman and one of their number as secretary. (1907, ch. 436, sec. 7.)

As to oath, see Code, secs. 1073-1081.

81. [1188a22]. Failure to qualify vacates the appointment; oath to be filed; report of organization.—A failure on the part of any commissioner of elections to qualify as above provided shall in all cases vacate the appointment of such commissioner, and the oath of the commissioner duly dated shall be filed with the secretary of the state board of elections, within twenty days after their qualification, together with a report of their organization, the names of the officers, and the names, postoffice addresses, etc., of [the commissioners of] elections. (1907, ch. 436, sec. 8.)

82. [1188a23]. To report vacancies to state board of elections.—Said commissioners of elections shall give prompt notice to said state board of elections of all vacancies. (Ib.)

83. [1188a24]. To appoint judges of elections and pub-

lish their names, when.—It shall be the duty of said commissioners of elections, within sixty (60) days prior to any election held within the county for which they are appointed, and at least ten days prior to any such election, to appoint and announce by publication in a newspaper of the county, if there shall be one, the appointment of three judges for each and every voting place in their county to superintend the election at the precinct or voting place for which said judges shall be appointed. (1907, ch. 436, sec. 9; 1909, ch. 104, sec. 1.) See secs. 1181 and 1193 of Code of 1896.

84. [1188a25]. Not more than two judges from the same political party.—Not more than two of said judges shall be of the same political party, if persons from different political parties are willing to serve, and they shall be appointed from the two political parties most numerously represented in the ward, district, or precinct for which said judges are appointed. (Ib.) See secs. 90 and 94. See, also, sec. 1182 of the Code of 1896.

85. [1188a26]. Each member may appoint one judge.—Each member of the board of election commissioners shall have the right and power to designate and appoint one of said judges, without the consent of his associates on said board. (1909, ch. 104, sec. 1.)

86. [1188a27]. Appointment of watchers at each voting place to be made in writing, by whom.—Two watchers representing the majority party in the state and two watchers representing the minority party shall be appointed at each and every precinct or voting place, and one of the watchers representing the majority party shall be appointed only by the chairman of the county executive committee of the majority party in the state and the other by a majority of the candidates of the majority party running exclusively within the county in which the watches [watchers] are to be appointed, and the watches [watchers] representing the minority party shall be in like manner appointed, one by the chairman of the county executive committee of the minority party in the state and the other by a majority of the candidates of the minority party running exclusively within the county in which the watcher is to be appointed; and in case such candidates of either party fail to appoint the watchers as herein provided, two whole days prior to the election, the chairman of the county executive committee representing the party whose candidates failed to appoint such watcher

shall appoint both watchers representing his party, and the appointment of said watchers shall be made in writing and signed by the parties herein authorized to make the appointment and presented to the judges holding the election, and said watchers shall have full access to the polling places during the time the votes are being polled and during the time the votes are being counted, and the right to inspect all ballots while being called and counted and all tally sheets and poll lists during preparation and certification thereof; but they shall not in any way interfere with any voter in the preparation or casting of his ballot, or the judges, officers, or clerks in the performance of their respective duties in holding the elections. (Ib.)

87. [1188a28]. To appoint clerks of elections and publish their names, when.—Said commissioners of elections shall also, within sixty days, and at least ten days prior to any election within the county for which they are appointed, appoint and announce by publication in a newspaper of the county, if there be one, the appointment of two clerks of elections for each and every voting place in their county. (1907, ch. 436, sec. 10; 1909, ch. 104, sec. 2.)

88. [1188a29]. Clerks of elections to be appointed from the two political parties, when.—If competent persons of different political parties are willing to serve, they shall be appointed from the two political parties most numerously represented at such precinct or voting place. (Ib.)

89. [1188a30]. One clerk to be appointed by majority members, and one by the minority member.—One of said clerks shall be appointed by the members of the commissioners of elections representing the majority party, and the other clerk shall be appointed by the member of the commissioners of elections representing the minority party in the state. (1909, ch. 104, sec. 2.)

90. [1188a31]. Minority party is defined.—By minority party is meant the party polling in the State of Tennessee the second highest number of votes for presidential electors at any presidential election immediately preceding the appointment of officers under this chapter. (Ib.) See secs. 71, 84, and 94.

91. [1188a32]. Commissioners of elections must act jointly as a board in appointing judges and clerks in certain counties, and watchers to be appointed by judges.—The pro-

visions of sections 80 and 84 that the minority member of said commissioners of elections, without the consent of his associates, shall have the right to appoint the minority judge and clerk for each precinct or voting place in the county for which the minority member is appointed, shall not apply to any counties in the state having a population of not less than 24,950 and of not more than 27,075, and of not less than 29,500 and of not more than 30,595, by the federal census of 1900 or by any subsequent federal census; but in such case the board shall act jointly; and in counties of the population aforesaid, the watchers provided for in this chapter shall be appointed by the judges of election or a majority thereof. (Ib.)

Counties included in the exception provisions of this section.—Under the federal censuses of 1900, 1910, and 1920, and under the case of *Hall v. State*, 16 Cates, 235, 238, 239, 241-246 (headnotes 6 and 8), the counties included within the exception provisions of this section are as follows: Dyer, Fayette, Haywood, Henry, Lincoln, McMinn, Robertson; Sumner; Tipton, Williamson; and Wilson.—Ed.

92. [1188a33]. To appoint an officer of election for each voting place, and announce his name, when.—The said commissioners of elections, within sixty days and at least ten days prior to any election within the county for which they are appointed, shall appoint and announce the appointment of an officer of election for each voting place in such county. (1907, ch. 436, sec. 11.)

93. [1188a34]. Notices of elections, with names of officers, judges, and clerks, to be published in newspaper.—It shall be the duty of the said commissioners of elections to publish notices of all elections, together with the names of all the officers, judges, and clerks appointed to hold the same, in some newspaper (if there be any printed in the county), not less than ten days preceding such elections and for not less than two issues of each paper, the fees for such publication to be paid out of the county treasury as other expenses of the county and at the rate provided by law for legal publications. (1909, ch. 273.)

As to rate provided by law for legal publications, see Code, secs. 3843, 6425, and notes.

94. [1188a35]. Two parties to be represented in judges and clerks.—The commissioners of elections in appointing judges and clerks in all elections shall give bona fide representation to each of the two parties most numerously represented in the ward, district, or precinct for which they are appointed. (1907, ch. 436, sec. 12.) See sec. 84.

95. [1188a36]. Judges, clerks, and officers shall be resident citizens of the ward, district, or precinct.—The judges, clerks, and officers of election shall be residents and citizens of the ward or district or precinct in which the voting place for which they are appointed is situated. (1907, ch. 436, sec. 13.) See sec. 36, subsec. 2; sec. 91.

96. [1188a37]. Vacancies caused by absence of judges, clerks, or officer to be filled, how and by whom.—Whenever for any reason any judge or clerk or officer of election so appointed fails to attend promptly, and, by reason of his absence at the hour of holding the election, other persons shall be selected to fill such vacancies by a majority of the election officers duly appointed and attending, and the election officers so elected to fill vacancies shall be residents and citizens of the ward, district, or precinct for which they are appointed, and shall act only until the regularly appointed judge or clerk or officer of election in whose stead he was appointed appears and demands that he be permitted to serve, and the person so elected to fill the vacancy shall cease to act; but any such person so elected to fill a vacancy shall be of the same political party as the person in whose stead he is selected to serve. (1907, ch. 436, sec. 14.) See secs. 49 and 95.

Election officers are compelled to serve in Hamilton county.—By Acts 1911 (Private), ch. 403, all citizens of Hamilton county who may be appointed as officers, judges, clerks, registrars, or assistant registrars, to hold or assist in holding elections in said county, are compelled to serve as such, and compensation is provided for their services.—Ed.

97. [1188a38]. Officer to deliver returns and ballots to commissioners, when.—It shall be the duty of the officer holding the election to deliver the polls or returns of the election sealed as received, together with the ballots cast in said election, to the said commissioners of elections not later than 12 o'clock noon on the first Monday after the election. (1907, ch. 436, sec. 15.) See sec. 203.

1. Question whether the commissioners and quarterly county court could go behind the returns, and count the ballots, was reserved.—This requirement as to the delivery of the ballots is a new one, on which the commissioners of elections and the quarterly county court based their right to go behind the poll lists and returns and to examine the ballots; but the supreme court refused to consider the question whether they acted correctly in so doing, upon the ground that the circuit judge held that he also had the right to make an independent investigation and to examine the ballots, and accordingly made such investigation and rendered judgment; and, for that reason, the supreme court was required only to reëxamine the judgment of the circuit judge, and not that of the commissioners of elections and

the quartely county court. *Catlett v. Railroad*, 12 Cates, 699, 708, 709 (headnote 3). But see note 1 under sec. 98.

2. Preservation of ballots was not previously required.—This requirement as to the delivery of the ballots is a new one. *Catlett v. Railroad*, 12 Cates 708 709.

By this section, the ballots were, for the first time, required to be preserved and placed in the hands of the commissioners of elections. *Taylor v. Carr*, 17 Cates, 254, 255, 256.

3. Ballots must be delivered sealed up, and preserved for a contested election.—Under this section, the ballots must be delivered to the commissioners of elections, sealed up; and it necessarily results that they must be kept by these officers in that form until needed upon a contest of election; and then, in case of contested election, they should be opened only in some form fair to both sides, after due notice, and after the adoption of proper precautions to prevent spoliation or mutilation. *Taylor v. Carr*, 17 Cates, 253, 254, 257; *Stokely v. Burke*, 3 Thomp., 226, 227.

4. Ballots must be sealed when delivered to election officer.—The statute requires the ballots to be sealed, when placed in the hands of the election officer at the close of the polls, and they should be so delivered by him to the commissioners of elections. *Stokely v. Burke*, 3 Thomp., 226, 227 (no headnote on this subject).

98. [1188a39]. Commissioners to file and canvass returns, and deliver certificates of election, when.—On the first Monday after the election, it shall be the duty of the commissioners of elections to file the said polls and returns at the courthouse, and to certify in writing, signed by at least two of them, the result as shown by said polls or returns, and to deliver to each person elected a certificate of his election. (1907, ch. 436, sec. 16.) See secs. 203, 211, 214, 216—218.

1. Commissioners of elections cannot go behind the returns and recount the ballots, but must preserve the ballots under seal for use in a contest.—Under section 97 requiring the officer holding the election to deliver the polls or returns of the election, sealed as received, together with the ballots cast, to the commissioners of elections, and under section 98 requiring the commissioners of elections, on the first Monday after the election, to file said polls and returns at the courthouse, and to certify in writing the results shown thereby, and to deliver to each person elected a certificate of election, and under sections 99 and 100 requiring the preservation of the poll lists and tally sheets, the duties of the commissioners of elections are only ministerial, and not judicial, and they cannot go behind the returns and examine and recount the ballots, but they must preserve the ballots, under seal as delivered to them, for the use of the parties in the case of a contest. *Taylor v. Carr*, 17 Cates, 235, 253-257 (headnote 16). See note 1 under sec. 97; notes under sec. 213.

2. Petition alleging petitioner's election by a majority vote, wrongfully revised by commissioners of elections, so as to give contestee a majority, is not subject to demurrer.—Where the petition in a contested election case, over the office of mayor, alleges that the returns made up by the election officers, under the Dortch law (sec-

tions 155 to 183), then and there in force, gave to the petitioner a majority of the votes; that he received 190 votes and the contestee 185 votes; but that, when these returns were sent to the commissioners of elections, they assumed to go behind the poll lists and tally sheets, and to examine the original ballots, and to throw out votes; and that, by such action, the result was so changed as to give the contestee a majority, to whom a certificate was thereupon issued, a demurrer to such petition, upon the alleged ground that it shows no case, in that it admits that the contestee received a majority of the votes cast under the Dortch law, is bad, because the petition does not admit what the demurrer assumes that it admits. *Taylor v. Carr*, 17 Cates, 235, 246-248 (headnote 8).

3. **Amendment of answer involving the right of commissioners of elections to go behind the returns is without merit.**—The commissioners of elections have no power to go behind the returns; and a proposed amendment to the defendant's answer, based upon the theory that they had such power, is without merit. *Taylor v. Carr*, 17 Cates, 235, 253 (headnote 14).

4. **Amendment of answer inviting court to recount ballots, without allegation of the object of the recounting, is insufficient, and is properly refused.**—Where the proposed amendment to the answer in a contested election case, in effect, invited the circuit court to make a recount of the ballots generally, without any allegation as to the particular matters to be determined by such recounting, other than the general result of the election, such proposed amendment was insufficient to enable the court to exercise that power, and was properly refused by the trial judge. *Taylor v. Carr*, 17 Cates, 235, 253 (headnote 15).

5. **Ballots must be sealed, or their preservation shown with great clearness, to authorize the recounting thereof.**—Where it appears that the ballots were not sealed, as required by section 97, before being delivered to the commissioners of elections, they cannot, for that reason, be examined, unless it should be made to appear with great clearness that they had been so kept as not to be the subject of interference or change; and it does not appear from the evidence that the ballots had been so kept, where the commissioners of elections testify that while in their possession they were not altered, but that they were placed in the safe of the county judge, not sealed up, and subject, of course, to interference by any one who might have access, through said county judge, to that safe, and the testimony of the county judge was not taken; and where likewise it is not clear what care was exercised over the ballots after the election, and before they were handed to the commissioners of elections. *Taylor v. Carr*, 17 Cates, 253, 254 (no headnote on this subject); *Stokely v. Burke*, 3 Thomps., 225, 226.

6. **Ballots preserved as required by statute prevail over returns, but not, if not so preserved, and opportunity to tamper with them existed.**—Where the ballots cast at an election have been preserved in strict accordance with the statutory requirements, which preservation has prevented tampering with them, and they are offered in evidence in a contested election case where the issue to be tried depends upon the number of ballots cast for each candidate, such ballots, when so preserved, are primary and controlling matter of evidence, sufficient in law to overthrow the *prima facie* case made by the returns,

where the showing made by the ballots conflicts with that made by the returns; and the same result is sanctioned where the ballots have been preserved, not in strict accord with statutory authority, but so preserved that they have not been tampered with by unauthorized persons; but where the ballots have not been properly preserved, in accordance with the statutory precautions or otherwise, and unauthorized persons have had reasonable opportunity to tamper with the ballots, their competency, as evidence to contradict the *prima facie* case made out by the returns, is destroyed. *Stokely v. Burke*, 3 *Thomp.*, 219, 223-226.

7. Ballots tampered with are inadmissible to contradict the returns.—The ballots are tampered with, and are inadmissible to contradict the returns of the election, where they were not preserved as required by law, and were three times counted at the courthouse on Monday following the election by persons without right under the law so to deal with them, and there appeared to be ample opportunity afforded for the destruction or substitution of the ballots. The commissioners of elections, even, have no legal right to count the ballots, which are in their hands for safe-keeping, and not for counting. *Stokely v. Burke*, 3 *Thomp.*, 219, 226, 227.

8. Preservation of ballots to prevent fraud and loss thereof.—The statutory precautions for the preservation of the ballots are designed to prevent frauds after the election, and also the accidental loss or misplacement of the identical ballots cast. *Stokely v. Burke*, 3 *Thomp.*, 227 (no headnote on this subject).

99. [1188a40]. Poll lists to be sent to secretary of state, copy to be filed with county court clerk.—The said commissioners of elections shall cause a true copy of all the poll books or poll lists used at or in any election to be made out, and, when completed, they shall file the same with the clerk of the county court, to be preserved by him as records for a period of four years, and the original poll books or poll lists used at or in any election shall be safely and securely kept by the commissioners of elections, and without alteration shall be sealed and forwarded to the secretary of state, at Nashville, Tennessee, within ten days after the election. (1907, ch. 436, sec. 16.)

100. [1188a41]. Copyist of poll lists for county court clerk to be employed and paid, how.—Said commissioners of elections shall employ a clerk or copyist to make out the copy of said poll books or poll lists for the county court clerk, and said clerk or copyist shall receive as compensation twenty cents for every hundred names on the poll list, which shall be paid as part of the expenses of the election as judges and clerks of elections are now paid. (1907, ch. 436, sec. 18.) See secs. 53 and 54.

101. [1188a42]. Commissioners of elections to perform duties of commissioners of registration.—In all and every of

the counties of the state within the provisions of the registration laws of the state, the commissioners of elections shall perform the duties of commissioners of registration. (1907, ch. 436, sec. 19.) See secs. 102-131.

See secs. 102-131.

1. **Acts 1897, ch. 13, was impliedly repealed by Acts 1907, ch. 436, compiled in this chapter.**—Said former act, providing for commissioners of election in counties under 50,000 inhabitants, was impliedly repealed or superseded by the statute compiled in this chapter, which is applicable in every county of the state.—Ed.

2. **Election as to question of the issuance of municipal bonds must be held by commissioners of elections, and not by sheriff.**—Under Acts 1897, ch. 13, providing for the appointment of commissioners of elections for every county having a prescribed census population, and requiring the commissioners, prior to every election, to appoint judges and clerks, and empowering the commissioners to appoint officers at each voting place, and divesting the county courts, mayors, boards of mayor and aldermen, and sheriffs in said counties of the power to appoint officers of election, there were embraced all kinds of elections, municipal as well as state and county, in the counties of the prescribed population, and an election held in an incorporated town, to determine the question of the issuance of bonds by it, must be held by the commissioners of elections, and not by the sheriff. *Weil v. Newburn*, 18 Cates, 223, 233, 234, 247-250 (headnote 5).

This decision was rendered upon sections 1, 2, and 5 of said act of 1897; but the same rule would exist under the statute compiled in this chapter, by construction of sections 83, 87, 92-98.—Ed.

3. **Elections were properly held under Acts 1897, ch. 13, before Acts 1907, ch. 436, became operative by appointment of commissioners thereunder.**—The statute compiled in this chapter, creating commissioners of elections in every county, and becoming operative only after the appointment of the commissioners thereunder, does not affect an election held prior to that time, and such prior election is properly held and conducted in the manner prescribed by said Acts 1897, ch. 13. *Weil v. Newburn*, 18 Cates, 223, 247, 250 (headnote 6).

4. **Statutory city charter empowering sheriff to hold elections for certain officers does not authorize him to hold election as to bond issue, when.**—The statutory charter of a town (Acts 1901, ch. 450), purporting (in section 6) to confer upon the sheriff the power of conducting elections for mayor, alderman, recorder, and marshal of the town, does not control an election in the town to determine the question of the issuance of bonds; but such election is properly conducted in the manner prescribed by Acts 1897, ch. 13, as shown in notes 2 and 3 above. *Weil v. Newburn*, 18 Cates, 223, 250 (headnote 7).

The amendment of a municipal charter, by extending the corporate limits, does not affect the manner of holding elections therein, when. *Weil v. Newburn*, 18 Cates, 223, 250 (headnote 8).

5. **Purchasers of bonds issued under election held by sheriff instead of commissioners of elections are chargeable with notice of voidness of election recited to be valid, when.**—The purchasers of bonds signed by those appointed for that purpose by a body empowered to issue them itself are chargeable with notice of the voidness

of the election, under which they were issued, though it was recited to be valid, where the election was void, because conducted by the sheriff instead of the commissioners of elections of the county, as provided for by said former Acts 1897, ch. 13, and such town could, as against the purchasers and holders of such bonds, though otherwise bona fide, contest the validity of the bonds, and the town was not estopped so to do by reason of the recital of compliance with all essential preliminaries; for there can be no innocent purchaser or holder of such bonds. *Weil v. Newbern*, 18 Cates, 223, 241—244. 251-266 (headnote 11).

CHAPTER 9.

REGISTRATION OF VOTERS.

102. [1189]. Applies to counties of 50,000 or more inhabitants, and to towns and districts of 2,500 or more.—In all civil districts, wards, and voting precincts in counties which have a population of 50,000 or over that number, computed by the federal census of 1890, or which may hereafter have that number or over, computed by any subsequent federal census, and in all cities, towns, and civil districts having a population of 2,500 inhabitants or over that number, computed by the federal census of 1890, or may hereafter have that number or over, computed by any subsequent federal census; each and every voter, in addition to the other regulations required by law, shall be registered as a voter as hereinafter provided, before he or she shall be allowed to exercise the elective franchise in any election held in any civil district, ward, or voting precinct in said counties having a population as herein provided; provided, that the last published census shall control in every case. (1890, 1st ex. ses., ch. 25, sec. 1; 1891, ch. 223; 1891, ch. 224, sec. 1; 1891, ex. ses., 12; 1919, ch. 139, secs. 1 and 2; 19th am. to U. S. const.)

See notes under secs. 156 and 183.

Applicable in what counties and towns.—As to what counties, the general registration laws are applicable, under each federal census, see Const., pp. 537-541, notes 40, 41. As to what towns said laws are so applicable, see Const., pp. 541-543, notes 42, 43.

It must be observed that the last clause in this section provides "that the last published census shall control in every case," meaning the last federal census. This is a clear expression of legislative intent that the rule announced in the case of *Hall v. State*, 16 Cates, 235, 238, 239, 241-246 (headnotes 6 and 8) that a law becoming applicable once in a county under a population classification, shall always remain applicable therein, notwithstanding population changes, shall not obtain or prevail under the registration laws. So, it follows that the application of the registration laws depends upon the population, as shown by the last published federal census, regard-

less of what may have been the application under previous federal censuses.—Ed.

2. Extension of registration and ballot laws to certain other counties.—By Acts 1903, ch. 536, the registration laws (sections 102-131) and the ballot laws (sections 155-183) are extended to all counties having a population of 18000 and less than 18500, by the federal census of 1900 or by any subsequent federal census. Under the federal censuses of 1900 and 1910, and under Hall v. State, 16 Cates, 235, 238, 239, 243-246 (headnotes 6 and 8), said act was and is applicable to Henderson county alone.

By Acts 1905, ch. 400, registration is dispensed with in said counties, but the registrars are required to perform certain duties at the election.

By Acts 1911 (Private), ch. 124, the Dortch ballot law is wholly extended and the registration law is partially extended, to counties of not less than 19399 nor over 19425 inhabitants, by the federal census of 1910, or any subsequent federal census, which act, under the federal census of 1910, would apply alone to the county of Cocke. This act was amended by Acts 1915 (Private), ch. 427, as to the marking of ballots.

By Acts 1901, ch. 147, said registration and ballot laws were extended to the wards and civil districts including towns of 750 inhabitants or more in counties of 15000 inhabitants or more, under the federal census of 1900 or any subsequent federal census.

3 This latter statute (Acts 1901, ch. 147) is considered to be unconstitutional.—By its caption, its provisions are limited to wards and civil districts including certain county towns and incorporated towns, while, by the body of the statute, its provisions are not confined to said subject, but are extended to wards and civil districts including any town, whether incorporated or not, where the county and town have the required population.

A county town is a county seat, the capital town of a county, where the county business is transacted. This statute was intended, as shown by its caption and body, to apply to county towns, regardless of whether they were incorporated or not, because they were not required to be incorporated.

But as to all other towns falling within the provisions of the law by reason of population the provisions of the statute are expressly confined, in its caption, to incorporated towns, while in its body, its provisions are extended to such towns, whether incorporated or not.

So, on this specific point, the caption limits the subject of legislation to incorporated towns, while the body of the statute undertakes to extend the subject of legislation to all towns, whether incorporated or not, if the required population exists. So, it clearly appears that the subject of legislation attempted to be enacted is not expressed in the caption, that the body of the act attempts to go beyond the limitations and restrictions of the caption; and it, therefore, follows that the act is unconstitutional, and void. See Const., art 2, sec. 17 (p. 217); p. 221, note 16; p. 227, note 31; p. 230, note 41; pp. 223, 234, notes 53-56; pp. 241-243, note 58.

What may be another objectionable feature to said statute is the unusual provision that the population, when not shown by the federal census, "shall be ascertained as of the date of the federal census by the election commissioners by the best means available, and the

fact declared by them." No procedure before the commissioners to ascertain the population is prescribed; but it seems to be left to the arbitrary determination of the commissioners, without any right of appeal to the courts. This may be another fatal objection to said act.

In *Davis v. Rogersville*, 23 Pickle, 588, it was decided that, where this law applied, a special election held after its enactment and before the time of general registration provided by law, in pursuance of another legislative enactment, was properly held under the old law. The special election authorized by the legislature was required to be held before the time of the general registration and the statute (Acts 1901, chapter 341) authorizing this special election was enacted at the same session, and subsequent to this act. The constitutionality of this statute (Acts 1901, ch. 147) was not mentioned in this decision, and it is presumed that its constitutionality was not questioned or raised. But if the constitutionality of the statute had been raised, the supreme court would not have passed upon the question. The statute was held not to apply to the election, and, therefore, the question of its constitutionality became immaterial in that case.

The constitutionality of statutes will not be passed upon by the courts unless it become absolutely indispensable to the administration of justice; and though the constitutional question is legitimately presented by the record, yet if the judgment of the court may satisfactorily repose upon any other question which may determine the case, the constitutional question will not be decided, and will only be adjudged when it is presented in a case which cannot otherwise be disposed of, and in which a decision upon it becomes absolutely necessary. *Beck v. Puckett*, 2 Shannon's Cases, 490, 494, 495. See Const., pp. 612, 613, notes 25-28; p. 85, note 28a2.

4. Extension of registration laws to certain counties and civil districts, under population classification.—By Acts 1915 (Private), ch. 230, the registration law is extended to all counties having, by the federal census of 1910 or any subsequent federal census, a population of not less than 39000 nor more than 40000. Under the federal census of 1910, this act applies in Madison county alone. Repealed by Acts 1917, Private ch. 736.

By Acts 1915 (Private), ch. 578, the registration law is made applicable to civil districts having a population of not less than 627 nor more than 630, and to districts having a population of not less than 641 nor more than 650, and to districts having a population of not less than 609 nor more than 610, and to districts having a population of not less than 581 nor more than 590, in counties having a population of not less than 24213 nor more than 24220, by the federal census of 1910, or any subsequent federal census. Under the federal census of 1910, this act is applicable to the Twelfth, Thirteenth, Twenty-first, and Twenty-second civil districts of Williamson county alone.

By Acts 1915 (Private), ch. 582, the registration law is made applicable to civil districts of not less than 1299 nor more than 1300 in counties having a population of not less than 24213 nor more than 24220, by the federal census of 1910 or any subsequent federal census. Under the federal census of 1910, this act is applicable to the Third civil district of Williamson county alone.

By Acts 1921, ch. 809, registration is required in counties having a population of not less than 13800 nor more than 13825, according to the federal census of 1920 or any subsequent federal census. Under the federal census of 1920, said act applies in Rhea county alone.

5. **Acts 1915 (Private, chs. 578 and 582, are probably unconstitutional.)**—Said acts whose provisions are substantially stated in the last two paragraphs of the preceding note are probably unconstitutional, for the reason that the population classification is arbitrary, and without reason. The registration laws cannot be applied, under a population classification, to part of the districts of a county, unless there is a substantial difference in the population thereof.—Ed.

6. **Registration of voters is dispensed with in certain counties.**—Under population classification, under the federal census of 1910, or any subsequent federal census, the registration of voters, under the federal census of 1910, is dispensed with in the counties named, by the acts given after each county, with population given as not less than the smaller number nor greater than the larger number, as follows: **Anderson** (Acts 1911, Private, ch. 597—17700 and 17750); **Bradley** (Acts 1913, Private, ch. 283—16330 and 16340); **Campbell** (Acts 1911, Private, ch. 419—27375 and 27400—see *Campbell Co. v. Wright*, 19 Cates, 1, 3, in which case a newspaper reported that this act was held to be unconstitutional; but the reported opinion stops where this question would be naturally taken up); **Dickson** (Acts 1915, Private, ch. 516—19950 and 20000); **Hardin** (Acts 1913; Private, ch. 284—17500 and 17521); **Hawkins** (Acts 1913, Private, ch. 142—23550 and 24000); **Jefferson** (Acts 1911, Private, ch. 581, secs, 2-5—17750 and 17760—whose constitutionality is doubted for the reason stated in note 2 under section 1232 of the Code, as to Acts 1915, ch. 21); **Marion** (Acts 1915, Private, ch. 445—18800 and 18900); **Marshall** (Acts 1911, Private, ch. 40—16860 and 16880); **McMinn** (Acts 1911, Private, ch. 212—21000 and 21100—but Acts 1921, Private, ch. 151, repeals Acts 1911, Private, ch. 212, but dispenses with the registration of voters in counties having a population of not less than 25130 nor more than 25140, according to the federal census of 1920 or any subsequent census, and thus continuing such dispensation of registration in McMinn county under the federal census of 1920); **Monroe** (Acts 1911, Private, ch. 262—20700 and 20800—repealed by Acts 1915, Private, ch. 305); **Scott** (Acts 1913, Private, ch. 211—12940 and 12950); **Sevier** (Acts 1915, Private, ch. 303—22296 and 22300) **Warren** (Acts 1907, ch. 225—16410 and 16425—but registrars are required to be appointed and to perform certain duties at the elections. The population classification in this act was made under the federal census of 1900. Under the federal census of 1910, Warren county passed out of the population classification; and under the provision in the fourth section of said act, making the last federal census control in every case, it is thought that this act does not, under the census of 1910, apply in Warren county, notwithstanding *Hall v. State*, 16 Cates, 235, 238, 239, 243-246, headnotes 6 and 8; and it seems that no other county comes within the population classification under the federal census of 1910).

By Acts 1919, Private, ch. 525, registration is not required in towns and civil districts in counties having a population of not under

15430 or not over 15440, according to the federal census of 1910 or any subsequent federal census. Under the federal census of 1910 and 1920, and under Hall v. State, 16 Cates, 235, 238, 241-243, 246, 247, said act is applicable in De Kalk county alone.—Ed.

By Acts 1917, Private, ch. 704, registration is dispensed with in counties having a population of not less than 13900 and not exceeding 13915, by the federal census of 1910 or any subsequent federal census. Under the federal censuses of 1910 and 1920, and under Hall v. State, 16 Cates, 235, 238, 241-246, the said act applies in Humphrys county alone.

By Acts 1919, Private, ch. 181, registration is dispensed with in counties having a population of not less than 39357 nor more than 39500, by the federal census of 1910 or by any subsequent federal census, but said act does not apply to incorporated towns in said counties. Under the federal census of 1910 and 1920, and under Hall v. State, 16 Cates 235, 238, 241-243, 246, 247, said act applies to Madison county alone.

7. Registration and Dortch ballot laws are dispensed with in certain counties.—By Acts 1915 (Private), ch. 378, the registration and Dortch ballot laws are dispensed with in counties having a population of not less than 17569 and not exceeding 17575. Under the federal census of 1910, this act applies in Lawrence county alone.

By Acts 1915 (Private, ch. 445, the registration and Dortch ballot laws are made inapplicable, and Acts 1891, ex. ses., ch. 21, compiled in sections 1259 to 1263 of the Code prescribing the 3 by 7 uniform ballot, is made applicable, in all counties having a population of not less than 18800 and not more than 18900, according to the federal census of 1910 or any subsequent federal census. Under the federal census of 1910, this act is applicable in Marion county alone). But see secs. 155-183 and especially sec. 156; note under chapter 12.

103. [1190]. Duty of commissioners of elections when town or district is divided.—If any town or district shall be divided after coming under the provisions of this chapter, it shall be the duty of the commissioners of elections to, at once, ascertain whether either of the divisions of the divided district or town still has the requisite number of inhabitants to continue it under the provisions of this chapter, according to the preceding federal census last published. (1890, 1st ex. ses., ch. 25, sec. 1, 2d proviso; 1907, ch. 436, sec. 19.) See sec. 101; notes under sec. 183

104. [1191]. Commissioners of elections shall appoint registrars.—It shall be the duty of said commissioners of elections to appoint registrars of voters as herein provided, a majority of the board in all cases having full power to act. (1890, 1st ex. ses., ch. 25, sec. 2; 1907, ch. 436, sec. 19.) See sec. 101.

105. [1192]. Registrars, appointment of.—The commis-

sioners of elections herein provided shall, ninety days prior to every general, state, county, and municipal election, or election for the issuance of improvement bonds, appoint two registrars of voters, both of whom shall be residents of the civil districts or wards they are intended to serve in, not more than one of whom shall be of the same political party, for such civil district, county, town, or city falling within the provisions of this chapter in their respective counties; provided, that where towns or cities in such counties are divided into wards, voting separately, they shall appoint two registrars for each ward in such town or city; provided, that the provisions of this chapter shall not apply to special elections held by any city or town to enable it to subscribe to the capital stock of any railroad or issue bonds for funding outstanding indebtedness, when said city or town votes in conjunction with the civil district in which it is situated. (1890, 1st ex. ses., ch. 25, sec. 3; 1891, ch. 7.) See secs. 166, 183.

Section 1193 of the Code of 1896 was superseded by sections 83-85, 87-89, 92-94 of this compilation.

Acts 1897, ch. 16, sec. 1, amending said section of the Code of 1896, by substitution, was itself also superseded by said sections of this compilation and section 95 thereof.—Ed.

106. [1194]. Commissioners of elections to furnish books, stationery, etc.; county to pay for same.—The commissioners of elections, for any and all counties affected by this chapter, shall have power to purchase, at the expense of their respective counties, and shall purchase and furnish, all such books, stationery, etc., to the registrars in the different wards and districts affected by the provisions of this chapter, necessary to its proper execution in accordance with forms to be furnished by the state comptroller, as hereinafter provided; and said commissioners shall certify cost of the same to the county judge or chairman, and he shall issue his warrant on the county treasury of his county to pay for said books, stationery, etc., and said registrars shall be held accountable as custodians of said registration books, stationery, etc., except as hereinafter provided. (1890, 1st ex. ses., 25, sec. 4; 1907, ch. 436, sec. 19.) See sec. 101.

107. [1195]. Hours of registration of voters appearing in their own proper persons.—It shall be the duty of said registrars for civil districts and wards, respectively, to open, on the days designated herein for registration, in some convenient place in each ward or civil district affected by this chapter, an office for the registration of voters, and to be at their

offices from 8 o'clock a. m. till 9 o'clock p. m., for the purpose of registering voters and furnishing to voters so registered certificates of such registration, where they appear in their own proper persons before said registrars, and registered by them, within the hours and on the days as herein provided. (1890, 1st ex. ses., ch. 25, sec. 5; 1895, ex. ses., ch. 3.)

108. [1195a1]. Commissioners of elections shall give notice of general registrations.—It shall be the duty of the commissioners of elections to give at least ten days' notice of the time and place of such registration in some newspaper published in the county where such civil district, town, or city is located, or by written or printed notices posted in three or more public places in the civil district or ward for which they are appointed. (1890, 1st ex. ses., ch. 25, sec. 5; 1895, ex. ses., ch. 3, sec. 6; 1907, ch. 436, sec. 19.) See secs. 101 and 114.

Advertisement of notice of registration is to be given, when.—Under the provision of this section and section 114, it is concluded that the advertisement or notice of the registration must be given as to the general registrations, but not as to special registrations before each election.—Ed.

109. [1196]. Registration every two and four years.—Only one general registration every two and four years shall be required of voters to entitle them to vote under the provisions of this chapter, except upon a change of residence; provided, that registration shall not be good for more than two years. (1895, ex. ses., ch. 3, sec. 1.) See secs. 111, 112, and 117.

1. What is meant by registration every four years.—The provision in this section as to registration every four years is inexplicable, within the terms thereof, in view of the proviso "that registration shall not be good for more than two years." But in view of section 112, the four year registrations apply to certain civil districts in counties not wholly subject to the registration laws.—Ed.

2. Acts 1895, ex. ses., ch. 3, is thought to be unconstitutional.—Said act is considered to be unconstitutional for the reasons hereinafter stated. (1) It purports, in its title and body, to be expressly amendatory of former laws; but it does not recite, in its caption or body, the title, substance, or subject of the former laws so ought to be expressly amended. The statement of the proposed amendment for only one general registration every two and four years is not a recital of the title, substance, or subject of the former laws so sought to be expressly amended. A statute expressly amending a former statute cannot do so by mere reference to the chapter of the published acts for a certain year. This appears to be a fatal defect in said act, which renders it unconstitutional. See Const., art. 2, sec. 17 (p. 217), and notes 86-87a2 (pp. 249, 250). (2) Even, if the title of the said act be treated as sufficient on its face, yet it is limited to the provision that only one general registration every

two and four years shall be required. Passing by what is meant by "every two and four years," and treating the same as properly and sufficiently explained in the body of the act, it is clear that the body of the act contains material matter not included in said title. Besides fixing the times of the registrations, which only is included in the title, the body undertakes to prescribe regulations thereof. The title is restricted or limited to the times of the registrations, and does not otherwise include regulations thereof, which are presumed to be made in the former acts. The provision in the third and fourth sections making registration prerequisite to voting is not included in the title. The provision in the fifth and sixth sections as to the special three day registrations before each election is not included in the title which is limited to general registrations every two and four years, and does not include irregular and special registrations. The provision in the seventh section requiring the registrars to attend the elections, or to furnish the judges of the election certified copies of the registration lists of voters, as the case may be, and the other services to be performed, and fixing their compensation for all such services, is not included in said title. The duties required, in the eighth and ninth sections, to be performed are not included in said title. The matter in the seventh section might be elided, so as to remove that objection as against the rest of the act. But to elide the other matters not included in the title would leave so little in operation that the courts can hardly assume that the legislature would have passed the act with such matters left out. See Const., art 2. sec 17 (p. 217); note 10 (p. 218); notes 30, 31 (p. 227); notes 54-56 (pp. 233, 234); note 58 (pp. 241-243).

Notwithstanding these defects which may render the said act, or a great part of it, unconstitutional, the same is herein compiled, because the author does not care to assume the responsibility of omitting the same as unconstitutional.—Ed.

110. [1197]. Registration books, when opened; certificates of registration.—In all the territory wherein voters are, by law, required to register, the registrars of the various wards and districts shall open the registration books on the second Monday in August, 1895, and on the second Monday of August every second year thereafter, and the same shall be kept open for the registration of voters for ten days, not counting Sundays, and all the qualified voters in said wards and districts desiring to register as voters shall register, within the said ten days, in the manner registration is required by law to be made, and the registrars shall issue certificates of registration, as provided by law. (1895, ex. ses., ch. 3, sec. 2.)

Constitutionality of this statute has been conceded in practice, and may not be declared to be unconstitutional for that reason, after so long a time, but if this section should be held to be unconstitutional, then the registration must be made so as to close at least twenty days before the date of every election, as provided in Acts 1890, 1st ex. ses., ch. 25 secs 3 and 5. As to the unconstitutionality of this section, see note 2 under sec. 109.

111. [1198]. Registration is prerequisite to voting; general registration for two and four years; change of residence.

—Registration as provided for in section 105, and the other provisions hereof, shall be prerequisite to voting in all elections in such territory, and when such registration has been made under the provisions of this chapter, no other or further general registration for two and four years shall be made or required as a prerequisite to his voting, except in cases where the voter has changed his residence. (1890, 1st ex. ses., ch. 25, sec. 5; 1895, ex. ses., ch. 3, sec. 3.) See secs. 109, 112, 113, 114; note 1 under sec. 109; note under sec. 129.

112. [1199]. No unregistered person to vote; registration every four years in certain civil districts.—No voter shall be allowed to vote in any election wherein registration is required by law, unless he shall have first registered, under the provisions of this chapter, as much as twenty days before the election wherein he offers to vote, is held. But registration of voters shall only be required every four years in civil districts having less than five thousand population, according to last census, whenever such civil districts are in counties not wholly subject, by the present laws, to registration. (1895, ex. ses., ch. 3, sec. 4.) See secs. 109 and 111; note 1 under sec. 109.

1. Voter otherwise qualified to vote, but voting without registration, is guilty of a misdemeanor, when.—The registration laws make registration a prerequisite to voting in all elections held in counties and districts falling within their provisions, and prohibit voters from voting, without the required lawful registration; and a landowner thus qualified to vote, but voting in a municipal election, without such registration, where registration is required, is guilty of a misdemeanor. State v. Weaver, 14 Cates, 198, 206 (headnote 3).

2. Nonresident owners of land in city must register before voting, where registration laws apply.—See Const., p. 377, note 22; note 4 under sec. 1952 of the Code.

113. [1200]. Change of voter's residence necessitates re-registration.—All persons who shall have registered under the provisions of this chapter, and hereafter [hereafter] change their residence by removing to another, either within or without the ward or district where registered, shall not be qualified to vote in any election thereafter held without having first reregistered under the provisions of this chapter, as much as twenty days previous to any election where he offers to vote; and the registrars in such cases, shall take up and cancel the certificate formerly issued to such voter, unless the same has been lost or destroyed. (1895, ex. ses., ch. 3, sec. 5.)

1. Legislative power to require the registration of voters previous to the election.—The legislature has the power to enact a statute prohibiting any registered voter from voting at any election, after changing his residence, by removing to another, either within or without the ward or district where he has registered, unless he reregisters at least twenty days before the election, even though he removed after the closing of the last registration and before the election. *Moore v. Sharp*, 14 Pickle, 491, 495-499, and especially 498; *State v. Weaver*, 14 Cates, 204.

2. Change of residence disqualifies voter and necessitates re-registration.—Change of residence by registered voter, either within or without the ward or district where registered, disqualifies him to vote, until and unless he shall reregister at his new residence as much as twenty days before the election, even though his removal was after the closing of the last registration and before the election; for the change of residence, within the twenty days before the election, absolutely and irremediably disqualifies the registered voter to vote in such election. *Moore v. Sharp*, 14 Pickel, 491, 495-499.

114. [1201]. Three day registration to be closed twenty days before every election; advertisement not required.—The registrars of the various wards and districts shall, in the manner now required by law, except that no advertisement shall be necessary, open the books of the wards and districts, or either of them, for the registration of voters therein previous to any election, or primary elections provided for by the laws of the state, to be held in any ward or district or precinct or voting place therein, and the books shall be kept open three days for registration, and the said registration days shall be continuous, and the books closed twenty days previous to the election; and the registrars shall, upon personal application of voters, register such voters who have not previously registered under the provisions of this chapter, and reregister those who have changed their residence. (1890, 1st. ex. ses., ch. 25, sec. 5; 1895, ex. ses., ch. 3, sec. 6; 1909, ch. 404.)

As to advertisement, see note under sec. 108.

115. [1202]. Questions to be answered before registration.—In all cases where the applicant for registration is not personally known to the registrars to be a legal voter in the civil district or ward in which he applies for registration, he shall, before being registered, answer and state his age, place of residence, stating district or ward, road or street, the number of his house, if numbered, and if not numbered, then a designation of its location, if not the owner, then the name of the owner or renter, where he resides or boards, the time of his residence in said state and district or city, whether married or single, his avocation, place of business, or where and by whom employed, the state, city or district, and post-office; if a newcomer, from whence he came, and if a for-

eigner, when and where naturalized; has he ever been disqualified as a voter by judgment or decree of any court; if so, when and by what court reinstated. (1890, 1st ex. ses., ch. 25, sec. 6.)

116. [1203]. Answers to be entered on books, and sworn to; false swearing is perjury; punishment.—The registrars shall keep suitable books in which the statements or answers of such applicants for registration shall be entered by them; and the said statements or answers shall be, when so made and entered by the registrars, sworn to by such applicant or applicants for registration; and, for that purpose, said registrars, or either of them, are empowered to administer said oath; and any false swearing on the part of any applicant for registration, as to the statements or answers touching his qualification to vote, as herein provided, is hereby declared to be perjury, punishable as perjury in other cases under the laws of the state. (Ib.)

117. [1204]. Certificate shall show what; right to vote under, except for fraud, perjury, or removal.—The registrars shall number the names of voters as registered, giving the color of each voter opposite his name on the registration book, and shall furnish to each voter so registered a certificate of his registration as a voter, which shall be numbered corresponding with his name on the registration book, and shall show on its face the name of the voter, his color, the ward or district in which he resides, and that he is entitled to vote, under said certificate, in all elections held in the district or ward within two years from the last general registration twenty days after the issuance of the same; and when so issued or delivered to the voter, he shall, on presentation of the same to the proper officer holding the election in the ward or district in which said voter resides and for which said registration was held, be entitled to vote in the election for which his certificate shows his qualification to vote, unless on challenge it be shown by proof to the satisfaction of the judges holding such election that the certificate was procured by fraud or perjury, or that the voter has removed from the ward or district in which he was registered; and no person shall be entitled to vote in such ward or district except on presentation of his certificate as a voter, as hereinbefore provided for. (1890, 1st ex. ses., ch. 25, sec. 6; 1895, ex. ses., ch. 3, sec. 9.)

See Acts 1889, ch. 218, as amended by Acts 1890, 1st ex. ses., ch.

23, pertaining to separate voting in state and national elections, and both repealed by Acts 1891, ch. 161—Ed.

Certificate of registration may be challenged before judges of election, where procured by fraud or perjury; fraud is defined.—The certificate of registration may be successfully challenged before the judges of election, where it is shown by proof to their satisfaction to have been obtained by fraud or perjury, or where the voter has removed, and such certificate is obtained by fraud in fact or in law, where the holder thereof was not a qualified voter. State, ex. rel., v. Willett, 9 Cates, 334, 361, 362 (headnote 9).

118. [1205]. Registration books kept open for inspection.—The registrars in each district and ward shall, immediately after the registration of voters for such ward or district is closed, keep the books of registration open for public inspection at the office of registration for the space of five days; and if any errors of a purely clerical nature are discovered during said time, the same shall be corrected by the registrars. (1890, 1st. ex. ses., ch. 25, sec. 7.)

1. **Mandamus will not lie to compel erasure of names of disqualified voters from registration books, after the five days when.**—The peremptory writ of mandamus will not be awarded, after the expiration of the five days allowed for the correction of clerical errors, to compel the election registrars to erase, from the registration books, the names of persons alleged to be disqualified as voters, because they have no power to revise the registration, after the expiration of such time. State, ex. rel., v. Willett, 9 Cates, 334, 351-362 (headnote 8).

2. **Mandamus will not lie to compel erasure from registration books, where the names improperly registered do not appear, when.**—The peremptory writ of mandamus will not be awarded to compel election officers to erase from the registration books the names of persons designated as residents or members of the Soldiers' Home, where it appears that some of these might be properly registered, but neither their names nor the names of those improperly registered appear in the record. State, ex. rel., v. Willett, 9 Cates, 334, 339, 350, 351 (headnote 6).

119. [1206]. Affidavit as to correctness of registration books; perjury to make false affidavit.—On the expiration of said five days, the said registrars shall make affidavit before any officer in their county authorized to administer oaths, on their book of registration, immediately following the close of the list of names of registered voters, to the correctness of their registration, and that they have, in all respects, in conducting such registration, complied with the provisions of this chapter; and any false statement made in said affidavit is hereby declared to be perjury on the part of the parties making the same, and punishable as perjury in other cases. (Ib.)

120. [1207]. Registration books to be turned over to commissioners of elections.—Said book or books of registration, when thus completed, shall be turned over by the registrars to the commissioners of elections for their county for safe-keeping, and said commissioners shall thereafter be held responsible for the same as in the case of other public records. (Ib.; 1907, ch. 436, sec. 19.)

121. [1208]. Compensation of registrars.—The registrars herein provided for shall be compensated in the sum of one dollar and fifty cents per day each, for the number of days of registration hereinbefore designated, and shall have the same rate of compensation for one additional day for correcting errors as hereinbefore provided for, to be paid out of the county treasury on the warrant of the judge or chairman of the county court when the account is certified by the commissioners of elections. In case of municipal elections, the costs shall be paid by the corporation or municipality for which said election is held. (1890, 1st ex. ses., ch. 25, sec. 8; 1895, ex. ses., ch. 3, sec. 2; 1907, ch. 436, sec. 19.) See secs. 110, 114, 129, 168.

Compensation of registrars in certain counties.—By Acts 1919, Private, ch. 251, it is provided that registrars shall receive three dollars per day in counties having a population of not less than 39357 nor more than 39500, according to the federal census of 1910 or any subsequent federal census. Under the federal censuses of 1910 and 1920, and under Hall v. State 16 Cates, 235, 238, 241-243, 246, 247, said act is applicable in Madison county alone.

By Acas 1919, Private, chs. 366 and 573, it is provided that election registrars in all counties having a population of not less than 25430 nor more than 25450, according to the federal census of 1910 or by any subsequent federal census, shall receive three dollars per day, and fifty cents for each certified list of voters. Under the federal censuses of 1910 and 1920, and under Hall v. State, 16 Cates, 235, 238, 241-243, 247, said acts are applicable in Henry county alone.

By Acts 1921, Private, ch. 702, sec. 1, it is provided that registrars shall receive two dollars and fifty cents per day, in counties of not less than 112,000 nor more than 115,000 inhabitants by the federal census of 1920, or any subsequent federal census, which provision under said census of 1920, applies to Knox county alone.—Ed.

For extra compensation of registrars in certain other counties, see note under sec. 53.

122. [1209]. Registration books to be marked at close of each day.—At the close of each day's registration, the registrars shall draw a heavy black line, in ink, immediately under the last name registered on that day, entirely across the page of the registration book, to indicate the completion of that day's registration. (1890, 1st ex. ses., 25, sec. 9.)

122a. [1210]. Refusal to register qualified voter is a misdemeanor in office; penalty.—Any registrar of voters [voters], willfully refusing to register any qualified voter, shall be liable to indictment by grand jury for a misdemeanor in office, and, upon conviction, shall be sentenced to pay a fine of not less than ten dollars nor more than one hundred dollars, or imprisoned in the county jail or workhouse for not less than ten nor more than thirty days, or both, at the discretion of the court. (1890, 1st ex. ses., ch. 25, sec. 10.)

123. [1211]. Who is entitled to registration.—All persons qualified to vote under existing laws at the date of his application, or who may become qualified by reason of his arriving at the age of twenty-one years by the date of the election for which the registration is had, or who will be qualified by reason of having resided in the state for twelve months and the county six months by the date of said election, shall be entitled to be registered as a voter under this chapter. (1890, 1st ex. session, ch. 25, sec. 11.)

Registration laws prescribe no qualification of voters, but are to determine who possess the voting qualifications.—See Const. p. 377, note 21.

124. [1212]. Disagreement of registrars, and action of commissioners of elections.—If the registrars disagree as to the right of an applicant to be registered as a voter, they shall register his name and issue to him a certificate as in other cases, writing across the face of the certificate the words; "The registrars disagree," and, in such case, the applicant may take such certificate to the board of commissioners of elections, who shall determine the question of disagreement, and indorse on the certificate the words, "approved" or "disapproved," as they may decide, and the holder of such certificate shall not be entitled to vote on such certificate, unless the word "approved" is indorsed on the same and signed by the majority of said board of commissioners. (1890, 1st ex. ses., ch. 25, sec. 12; 1907, ch. 436, sec. 19.) See sec. 101.

125. [1213]. Refusal or inability of registrars to act, how remedied.—In case of the temporary absence of a duly appointed registrar, on any of the days fixed for registration by this chapter, from sickness or other cause, he (and on his failure to do so, the commissioners of elections) shall select a person from the political party, to which he belonged, to act for him and in his stead, during such temporary absence; and, should any duly appointed registrar willfully refuse to act on any registration day, as herein provided for, the registrar not refusing shall have power to supply his place by

appointment of another registrar, to assist him, from the same political party, to which the declining member belongs, which appointment shall continue until the board of commissioners supply the place by another regular appointment; provided, that, in each case, an oath, the same as taken by regular registrars, shall be administered to such temporary registrars by any officer of his county authorized to administer an oath. (1890, 1st ex. ses., ch. 25, sec. 13; 1907, ch. 436, sec. 19.)

126. [1214]. **Oath of registrars.**—The said registrars provided for in this chapter, before entering upon the duties imposed upon them by this chapter, shall take and subscribe to the following oath: "I do solemnly swear (or affirm) that I will faithfully and impartially keep the register of voters in my district (or ward); that I will not knowingly register, or allow to be registered, any person not a legally qualified voter, and that I will not knowingly prevent any person from registering who is a legally qualified voter. So help me God." (1890, 1st ex. ses., ch. 25, sec. 14.)

127. [1215]. **Certain acts declared misdemeanors; fine and imprisonment.**—It is hereby declared a misdemeanor for any person to register or have his name registered as a qualified voter under this chapter, when he is not such a qualified voter; or to vote, or attempt to vote, on any certificate of registration issued under the provisions of this chapter to some one other or otherwise than the person voting, or offering to vote, on the same; or to procure or induce any other person to register or be registered as a voter not being legally qualified as such; or to induce or procure any other person to vote, or attempt to vote, on any certificate issued under the provisions of this chapter to another or otherwise than to the person voting, or offering to vote, on the same; or to alter, change, forge, or counterfeit, or procure the same to be done by another, the certificates of registration provided for in this chapter; or to issue, circulate, or in any way use, or attempt to use, any fraudulent certificate of registration, the same not having been regularly issued by duly appointed and legally qualified registrars, as provided for in this chapter. And any person convicted of either of said offenses shall be fined not less than fifty dollars, or be confined in the county jail or workhouse not less than thirty days, or both, at the discretion of the court. (1890, 1st ex. ses., ch. 25, sec. 15.)

128. [1216]. **Comptroller to furnish blank forms, etc.—**

To secure uniformity in registering voters under this chapter, the state comptroller shall furnish to the commissioners of elections in the various counties, where the same are required to be appointed under this chapter, blank forms for all books and certificates of registration required under and by the provisions of this chapter, and the same shall be paid for out of the state treasury as other claims are paid. (1890, 1st ex. ses., ch. 25, sec. 16; 1907, ch. 436, sec. 19.)

129. [1217]. Registrars to be at elections, and furnish officer certified lists of voters voting; compensation.—On the day of any election held, the registrars for each district or voting precinct shall appear at the place of holding said election, with the books in which said voters are numbered, together with a copy of the same, which shall be evidence of registration, and they shall occupy a place inside the polling precincts, and as each voter therein registered shall vote, said registrars shall check off or mark said voter; and said registrars shall make a copy of said voters checked off, and return the same to the officer holding the election, who shall file the same with election returns, for which service each registrar shall be paid by the county the sum of one dollar per day; but in no event shall a failure of registrars to attend and check the voters render void, in any instance, the election. (1890, 1st ex. ses., ch. 25, sec. 17; 1895, ex. ses., ch. 3, sec. 7.) See secs. 121, 168.

Voters must register in the civil district, ward, or precinct where they propose to vote.—The registration laws require the voter to register in the civil district, ward, or voting precinct where he proposes or offers to vote, as a prerequisite to his right to vote therein. This clearly appears from a consideration of all the provisions of the statutes, and such has been their practical construction. *State v. Weaver*, 14 Cates, 198, 206, 207 (headnote 4).

130. [1218]. Certified copy of registration list, if more than one voting precinct; compensation.—In districts or wards having more than one voting place, the registrars of such district or ward shall furnish to the judges of election at such additional voting place a certified copy of the registration list, or books, of such district or ward, and said judges shall perform the duties of registrars on the day of election as provided in the preceding section; such list shall be filed with the election returns, and made a part thereof. In checking off the name of the voter, and after he has voted, the registrars or judges shall write opposite the name of the voter the word "voted," and the number of his vote. Said registrars shall be

entitled to fifty cents each for said certified copy of list of voters. (Ib.) See secs. 121, 129, 168.

No statutory penalty for commissioner's charge for certifide list furnished to a candidate, in excess of fee allowed registrars, because commissioner's fee is not fixed by law.—Under Acts 1889, ch. 207, sec. 17, which, on the point involved, is substantially the same as the statute compiled in this section, it was held that one of the commissioners might charge a candidate for certified list of the registered voters more than the amount allowed by law to the registrars for such list to be furnished by them to the commissioners, without subjecting himself to the penalty for demanding or receiving any other or higher fees than those prescribed by law.

This decision was based upon the ground that the law had not fixed or prescribed a fee for such service, nor imposed any duty upon the commissioner to furnish such copies to candidates or any one else, and that section 6353 does not apply where the law has not fixed or prescribed any fee for the service. Garvin v. Glisson, 6 Pickle, 207.

131. [1219]. Death and removal of voters to be noted.—The registrars shall note the fact of the death and removal of voters upon the books of their wards and districts when facts are made satisfactory to appear. (1895, ex. ses., ch. 3, sec. 8.)

1. Registration laws enacted, repealed, amended, modified, and remaining in force since 1889.—Acts 1889, ch. 207, repealed by Acts 1890, 1st ex. ses., ch. 25, sec. 18; Acts 1890, 1st ex. ses., ch. 25, amended by Acts 1891, chs. 7, 223, and 224; Acts 1891, ch. 223, repealed by Acts 1891, ex. ses., ch. 12, sec. 2, and by the first section of the same act, it is again reenacted word for word, with the single exception of the omission of the word "voting" before the word "population;" Acts 1891, ch. 224, amended by Acts 1897, chs. 15 and 16; Acts 1899, ch. 378, modified by Acts 1907, ch. 436, sec. 19; Acts 1901, ch. 147; Acts 1903, ch. 536; 1919, ch. 71; 1920, ch. 12 (temporary).

2. Election laws are not applicable where they become effective too late to be put in operation.—The registration laws are not applicable where the registration cannot be made under the law, within the limited period allowed by statute for holding the election. Davis v. Rogersville, 23 Pickle, 588; Lindsey v. Allen, 4 Cates, 648; Weil v. Newbern, 18 Cates, 250. An election statute, putting the ballot or Dortch law in operation in a certain county, enacted too late for its machinery to be put in operation, does not apply to that particular election. Lindsay v. Allen, 4 Cates, 637, 647, 648 (headnote 6); Weil v. Newbern, 18 Cates, 250. An election held before a law becomes operative by the appointment of commissioners of elections thereunder must be held under the prior law. Weil v. Newbern, 18 Cates, 223, 247, 250 (headnote 6).

3. Registration authorized when it was omitted; temporary statute.—By Acts 1920, ex. ses., ch. 12, where the last general registration of voters required by law to be held preceding the year 1920 was omitted, provision is made for the three day supplemental registration prescribed in section 109 of this compilation; but this is

only a temporary statute applicable alone to the specified omission.
—Ed.

132. Absent voters may be registered upon sworn statement, when.—Any qualified voter who is compelled, on account of the trade or occupation in which he is engaged, to be absent from his home at the time voters are required under the laws of Tennessee to register in order to qualify them to vote, may register by sending by registered mail to the chairman or secretary of the county board of election commissions [commissioners] for said county, and said chairman or secretary shall file said sworn statement, with the officer holding such registration, before the expiration of the time during which said registration is authorized by law to be held.

A sworn statement that on all the days during which said registration is authorized by law to be held, said registrant was compelled by reason of his trade or occupation to be absent from his home.

Said statement shall also recite that the person so desiring to register is entitled to be registered in said precinct, ward, or district.

Said sworn statement shall give the place of residence of such absent voter, his occupation, his age, race, whether married or single, and the time of his residence in the State of Tennessee, and the county and city or town, and ward or district in which he resides. (1919, ch. 71, sec. 1.)

133. Registration of absent voter must show such, and so must certificate of registration.—On the receipt of the sworn statement made out as required in the preceding section, it shall be the duty of the officers holding the registration in the precinct, ward, or district in which such absent voter desires to be registered, to enroll the name of said voter on the list of registered voters and issue to him a certificate of registration similar to the certificate issued to other registered voters, and which certificate shall recite on its face that it was issued to a voter to be absent on account of his trade or business. Such registered list of voters shall also show that said voter was registered as an absent voter. (1919, ch. 71, sec. 2.)

134. Sworn statement must be actually received during registration period.—The sworn statement referred to in section 132 shall be actually received by the officers holding said registration before the expiration of the time during which said registration is authorized by law to be held, and no

certificate of registration shall be issued by said officers holding said registration if the sworn statement referred to in section 132 has been received after the time of the closing of said registration. (1919, ch. 71, sec. 3.)

135. Certificate of registration to be mailed to absent voter to his residence; sworn statements.—The certificate of registration issued in conformity with the provisions of sections 132 to 134 shall be mailed by the officers holding said registration to the place of residence of said absent registrant as given in the sworn statement herein above referred to. All such sworn statements shall be carefully preserved by the officers holding said registration. (Ib.)

136. Misdemeanor to register or attempt to do so, when not qualified to do so.—If any person registers or attempts to register under the provisions of sections 130 to 133, when he is not qualified to do so, he shall be guilty of a misdemeanor, and shall be punished as provided by existing law for false or fraudulent registration. (1919, ch. 71, sec. 4.)

Voting by absent voters is provided for in sections 227 to 252, both in general and primary elections.—Ed.

CHAPTER 10.

PAYMENT OF POLL TAX IS CONDITION PRECEDENT TO VOTING.

137. [1220]. Payment of poll tax is required sixty days before voting; satisfactory evidence of.—Every person, including both men and women, in this state, who is otherwise a qualified voter under the constitution and laws, shall, as a condition precedent to the exercise of voting, furnish to the judges of election satisfactory evidence that he or she has paid the poll tax, if any, assessed against him or her for the year next preceding the election not later than sixty days prior to the day of election, without which his or her vote shall not be received; provided, if any voter has been wrongfully assessed for such poll tax, this chapter shall not apply to him. (1890, 1st ex. ses., ch. 26; 1915, ch. 179, sec. 1; 1921, chs. 109, 110.) See Acts 1919, ch. 139.

1. Payment of poll tax thirty days before election is required in certain counties.—By Acts 1915 (Private), ch. 247, the payment of the state and county poll taxes for the year next preceding the election is required to be made not less than thirty days before the date of said election, as a condition precedent to voting therein, in all counties having a population of not less than 13640 nor more than

13660, under the federal census of 1910 or any subsequent federal census. Under the federal census of 1910, said act applies in Hamblen county alone. The exception made in section 138 is not contained in this special act.—Ed.

2. Women are not required to pay poll taxes for the year 1919 as a qualification for voting in the year 1920. because our constitutional provision (article 4, section 1) does not reach women voters desiring to vote under the suffrage privilege granted to them by amendment of the federal constitution after January 10, 1919, when poll taxes were assessable under statutes (Shannon's Code, sections 686, 771, and 774), against those subject to them. State, ex. rel., v. Bell, 16 Thomp., 133.

138. [1220a1]. Required payment of poll tax sixty days before election does not apply to voter absent from state, when.—The required payment of the poll tax sixty days before the election shall not apply to any citizen of the state who is a qualified voter, who was absent from the state, in the service of the government or beyond the seas, at the date when said poll tax is required to be paid by the terms of the preceding section, provided said voter, returning after said sixty day limit, shall be entitled to vote, if he furnish the judges of the election satisfactory evidence of his absence and that said tax was paid, [out] of the elector's own means. (1915, ch. 179, sec. 2.)

139. [1221]. Satisfactory evidence of payment of poll tax consists of what.—The satisfactory evidence to be furnished by the voter to the judges of the election, whether general or special, whether national, state, county, or municipal, that he has paid the poll tax contemplated by the constitution, assessed against him, if any, for the year next preceding said election, shall consist of the original poll tax receipt, or a duly certified duplicate and copy of same, or the duly authenticated certificate set out in section 153, when said tax has been paid to a constable and not to said trustee, properly certified by the trustee, or shall make affidavit in writing, and signed by the voter, that he has paid his poll tax, and that his receipt is lost or misplaced, which affidavit shall be filed with the said judges and by them attached and made an exhibit to the returns of said election. (1891, ch. 222, sec. 1; 1891, ex. ses., ch. 23, sec. 1.)

140. [1221a1]. Satisfactory evidence of payment of poll tax may consist of what.—The satisfactory evidence of the voter's payment of his poll tax may consist of the fact that his name appears upon the certified list of voters of his voting precinct, which lists, as well as one for each and every dis-

trict in the county, is to be made out and furnished by the trustee or other officer charged with such duties of each county of the state to the secretary of state and another copy to the chairman of the board of election commissioners of said counties, giving the name of each voter, in their respective districts, who has paid his poll tax, said lists to be made out and delivered to the secretary of state and to the chairman of the board of election commissioners of said counties not less than fifty days before any general election. The chairman of the county board of election commissioners shall deliver the list certified to him by said trustee or other officer to the judge holding the election, on or before the opening of the polls on election day. (1891, ch. 222, sec. 1; 1899, ch. 402, sec. 1; 1921, ch. 111, sec. 1.)

141. [1221a2]. List to be returned to whom; trustee charged with polls on same.—Said certified lists, as provided for in section 140, shall be returned to the chairman of the board of election commissioners, and by him returned with the poll sheets of the respective districts to the county court clerk, which shall be preserved by said clerk for a term of two years; and the trustee shall be charged with the poll tax of each person whose name appears on said certified lists. (1899, ch. 402, sec. 2.)

142. [1221a3]. Trustee's failure to make lists is a misdemeanor; fine.—It shall be a misdemeanor for the trustee to fail or refuse to make out said lists as provided in section 140, and upon conviction, he shall be fined not less than two hundred nor more than five hundred dollars. (1899, ch. 402, sec. 3.)

143. Secretary of state to notify attorney-general of failures to file certified poll tax lists; ouster proceedings.—It shall be the duty of the secretary of state to notify the attorney-general of the state what trustees or other officers have failed to file said certified poll tax lists as required in this chapter, and on receiving said notification, it shall be the duty of the attorney-general of the state to immediately proceed with ouster proceedings against such trustee or other officer as provided by existing law. (1921, ch. 111, sec. 2.)

144. [1221a4]. Failure of chairman of election commissioners to deliver list to election judges is a misdemeanor; fine.—It shall be a misdemeanor for the chairman of the board of election commissioners to fail or refuse to deliver said lists to the judges of the election, as provided for in section 140,

and upon conviction he shall be fined not less than two hundred nor more than five hundred dollars. (1899, ch. 402, sec. 4.)

145. [1221a5]. Trustee's compensation; oath to list; how paid.—The trustee shall be entitled to receive ten cents for every one hundred names in making out said lists. Said lists to be sworn to by the trustee before any officer authorized to administer an oath, to be paid as the compensation of judges and clerks of election are paid. (1899, ch. 402, sec. 5.)

Question as to constitutionality of the act compiled in sections 140-144.—If said act could be treated as an amendment of Acts 1890, 1st ex. ses., ch. 26, there could be no question as to its constitutionality, so far as its recital of the title of the act sought to be amended is concerned; for it expressly recites the title of said former act so sought to be amended. But if said act is to be treated as an amendment to Acts 1891, ch. 222, then its constitutionality is seriously doubted. The reference to Acts 1891, ch. 222, made in the title of said amendatory act might be treated as surplusage, if the body of the act could be treated as amending said Acts 1890, 1st ex. ses., ch. 26, but the body of said amendatory act does not purport to amend the said act of 1890, but expressly undertakes to amend said intermediate amendatory Acts 1891, ch. 222, with language to be so arranged and interwoven in juxtaposition with the language of said intermediate amendatory act that the amendment would be unintelligible, when placed out of connection with the said intermediate amendatory act and placed in connection with the said former act of 1890. So, treating said Acts 1899, ch. 402, as an amendment of Acts 1891, ch. 222, it is considered to be unconstitutional, for the reason that it does not recite the title, substance, or subject of the said intermediate amendatory Acts 1891, ch. 222, but only refers to it by its chapter number and the year of its enactment, which is clearly insufficient under the constitution (art. 2, sec. 17, p. 217), and note 86, p. 249. Mr. Shannon treated said statute as probably constitutional, in a note on pages 227 and 228 of his Code Supplement of 1904; but in his new Code, the conclusion was reached that said act was probably unconstitutional, for the reasons hereinbefore stated. However, since said act has been treated as constitutional by the administrative election officers of the state, it is compiled in the above sections.—Ed.

146. [1222]. Loss of poll tax receipt, and affidavit as to; form prescribed.—In case the voter has lost or mislaid his poll tax receipt, and seeks to cast his vote on an affidavit being made of such loss or mislaying as aforesaid, the following shall be the formula:

"State of Tennessee,.....County—ss. I,....., of precinct [or ward] No....., in said county of....., state aforesaid, do solemnly swear [or affirm] that I paid my poll tax on or about the day of....., 192.., to one....., the county trustee of county,

for the year 192., and took his receipt therefor, and that the same has been unintentionally lost or mislaid.

(Signed).....”
(1891, ex. ses., ch. 23, sec. 2.)

147. [1223]. Judges of election to administer oath; perjury to swear falsely.—And any one of the judges of said election is hereby authorized and empowered to administer said oath; and any voter swearing falsely in said affidavit is thereby guilty of perjury, and, on indictment and conviction, shall be subject to all the pains and penalties thereof. (Ib.)

Affidavit must be before judge of election.—The affidavit must be made before one of the judges of the election. An affidavit made before a justice of the peace, not one of such judges, is a nullity; and, if false, the affiant is not guilty of perjury. State, v. Bayless, MS., Jackson, 1895.

148. [1224]. Trustee to issue duplicate receipt, when.—It shall be the duty of the trustee, in case any legal voter has lost or mislaid his poll tax receipt heretofore issued, and who shall apply for a duplicate and copy thereof, to issue the same. Said duplicate shall be an exact copy of the original lost or mislaid, and upon the back of which said trustee shall make the following certificate:

“State of Tennessee, County—ss. I, , trustee of said county, do hereby certify that the within receipt is a full and true copy of the original poll tax receipt heretofore issued to , on the day of , 192..

“Witness my hand, at office, this day of , 192..

“(Signed) , Trustee of said county.” (1891, ex. ses., ch. 23, sec. 3.)

149. [1225]. Poll tax for year preceding election is contemplated, whether actually assessed or not.—The words “assessed against him,” occurring in sections 137 and 139, are hereby made to contemplate and mean the poll tax due by the voter for the year next preceding the election in which the vote is to be cast, and to which he is made subject under the revenue laws of the state, whether the name of the voter appears on the books of his county trustee or not. (1891, ch. 222, sec. 2; 1891, ex. ses., ch. 23, sec. 4.)

150. [1226]. Misdemeanor in voter and election judge for noncompliance; fine and imprisonment.—Any person voting, or any judge of any election permitting, knowingly,

any person to vote in the same without first having complied with the provisions of sections 127 and 129, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars and imprisoned in the county jail or workhouse ninety days. (1891, ch. 222, sec. 3; 1891, ex. ses., ch. 23, sec. 5.)

151. [1227]. Misdemeanor to issue blank or bogus poll tax receipts, or to falsely certify one, or to refuse copy of receipt; punishment and penalty.—Any trustee or his deputy who shall issue any blank or bogus receipt for the poll tax hereinbefore alluded to, or make a false certificate on any duplicate receipt, shall, for every such blank or bogus receipt issued as aforesaid, or false certificate made, be thereby guilty of a misdemeanor, and, on conviction, fined fifty dollars, imprisoned in the jail or workhouse of his county ninety days, and disqualified for election or reëlection; and any trustee refusing to give a duplicate copy of the poll tax receipt lost or mislaid as aforesaid, shall likewise be guilty of a misdemeanor and punished as in case of issuing blank or bogus receipts as aforesaid. (1891, ex. ses., ch. 23, sec. 6.)

152. [1228]. Grand juries to inquire and judges to give in charge.—The grand juries of this state are hereby given inquisitorial powers of offenses committed under this chapter, and the several circuit and criminal judges are required to give this chapter specially in charge, on the organization of each grand jury in their respective courts. (Id., sec. 7.)

153. [1229]. Trustee's certificate of payment of poll tax to constable.—When any such poll tax shall have been paid to the constable, and not to the trustee, said trustee, in giving to the voter the like certificate of payment as contemplated in section 148, instead of issuing to said applicant a copy of said receipt, shall issue the following certificate:

“State of Tennessee, County—ss. I,
trustee of said county, do hereby certify that the records
now on file in my office show that the poll tax due by.....
..... for the year 192.., was collected from said....
.....by and paid to....., my legal deputy
and collector and constable [as the case may be], on or about
the.....day of....., 192.., the original receipt given
said by said deputy and constable having
been lost.

“Witness my hand at office, this day of, 192...
“....., Trustee.” (Id., sec. 8.)

154. [1230]. Misdemeanor to issue bogus or false certificate, to vote on same, or for any election judge to permit such voting; punishment.—The issuance of any bogus or false certificate in the preceding section required shall be punished as required by section 151; and any person voting on any such bogus or false certificate, or any judge knowingly permitting any such person to vote on such certificate, shall be punished as in section 138. (Ib.)

1. **Actual payment of poll tax does not protect the voter failing to produce the statutory proof of payment.**—See Const., p. 377, note 19.

2. **Legislative power and duty to define and declare what shall be "satisfactory evidence" of payment of poll taxes, in elections.**—See Const., p. 377, note, 20.

CHAPTER 11.

BALLOT AND MANNER OF VOTING UNDER THE DORTCH BALLOT LAW.

155. [1231]. Ballots printed and distributed at public expense of counties and cities; certain terms defined.—All ballots cast in general elections for national, state, county, municipal, and district officers in the towns, counties, and civil districts, shall be printed and distributed at public expense, as hereinafter provided. The printing and distribution of ballots and cards of instruction to voters shall, in municipal elections, be paid by the cities, and in all other elections by the counties in which said elections are held, subject to the provisions of this chapter. The term "state elections," as used in this chapter, shall apply to any election held for the choice of national, state, county, or district officer or officers, and the term "state officer" shall apply to any person to be chosen at such elections. The term "national elections" shall apply to any elections held for the purpose of choosing a member of congress or electors for president and vice president of the United States. The term "city election" shall apply to any municipal election so held in a city, and the term "city officer" shall apply to any person to be chosen by the qualified voters at such an election. (1890, 1st ex. ses., ch. 24, sec. 1; 1921, ch. 117.)

156. [1232]. Applicable to all counties, cities, towns, and civil districts.—The provisions of this chapter shall be applicable to all counties, cities, towns, and civil districts in the State of Tennessee, without regard to population or number

of inhabitants thereof. (1890, 1st ex. ses., ch. 24, sec. 2; 1891, ch. 225; 1897, ch. 17; 1921, ch. 117, sec. 1.)

Notes not applicable.—Since the change made in the statute by Acts 1921, ch. 117, the voters under section 1232 of Shannon's Code are not pertinent; nor are the local acts applicable.—Ed.

157. [1233]. Ballots, provisions as to; names of candidates are put on ballots, how.—The ballots printed for use under the provisions of this chapter shall contain the names of all the candidates who have been put in nomination by any caucus, convention, mass meeting or other assembly of any political party in this state at least ten days previous to the day of election. It shall be the duty of the chairman of the board of commissioners to have printd all necessary ballots for use under the provisions of this chapter, and he hall cause to be printed upon said ballots the names of candidates so nominated, upon the written request of any one of the candidates so nominated, or upon the written request of any qualified voter who will affirm that he was a member of said caucus, and the name presented by him was the nominee of said caucus, convention, or mass meeting, or other assembly of any such political party. (1890, 1st ex. ses., ch. 24, sec. 3.)

158. [1234]. Independent candidates put upon ballot, upon petition, when.—The said officer shall cause to be printed upon said ballots the name of any qualified voter who has been requested to be a candidate for any office, by a written petition signed by at least fifteen citizens qualified to vote in the election to fill said office, when such petition has been given him at least ten days previous to the election. (Ib.)

159. [1235]. Becoming candidate within ten days of election, provision as to ballot.—If any qualified citizen has been nominated, as above specified, within less than ten days of the election, or has been requested to be a candidate, as above specified, then said names shall not be printed upon said tickets. But, in addition to the names printed upon said tickets, there shall be at least one blank space under each office to be voted for, and the candidate nominated or who desires to run of his own volition, may have a separate ticket printed, upon which the title of the office for which he is a candidate and his own name and address shall be printed; and said candidate may give these to the officer or officers distributing ballots upon the day of election, and said officer shall give to each voter, in addition to the printed ticket, as hereinafter specified, a copy of said ticket. The voters receiving said ticket shall not vote it, but may consult it to

enable him to write upon the ticket printed at public expense the name of such candidate, should he so desire, and designate the same by mark, as hereinbefore prescribed. (Ib.)

160. [1236]. **Voter unable to write, provision as to.**—But if said voter cannot write, he may receive from the officer holding the election a slip upon which the name of the candidate to be voted for is printed, and such slip shall be pasted in the appropriate blank space by the voter. The candidate to be voted for shall furnish the officer holding the election with said slips. (Ib.) See sec. 179, and notes.

161. [1237]. **Name of candidate may be withdrawn, how.**—After the proper officer has been notified of the nomination, as hereinbefore specified, of any candidate for any office, he shall not withdraw same, unless upon the written request of the candidate so nominated, made at least ten days before the day of election. (1890, 1st ex. ses., ch. 24, sec. 4.)

162. [1238]. **What ballots shall contain; arrangement; size.**—Every general ballot which shall be printed in accordance with the provisions of this chapter shall contain the names of all candidates nominated as hereinbefore specified, and not withdrawn as hereinbefore specified. The names of all candidates for the same office shall be printed together, and arranged alphabetically, according to the initials of their surnames, irrespective of party. But the order in which the title of the various offices to be filled shall be arranged upon each separate ticket or ballot shall be left to the will of the officer or officers charged with the printing of said tickets. The names of presidential electors shall be arranged in groups, according to political parties, and preceded by the words "Electors for [giving the name] candidate for president and for [giving the name] candidate for vice president." Whenever the question of a constitutional amendment or other question is so submitted to the vote of the people, such questions shall be printed upon the ballot after the list of candidates, followed by the words "Yes" and "No," so that the voter can intelligently vote his preference by making a cross mark (X) opposite the proper word. Immediately following the title of each officer shall be printed the words "Vote for one," "Vote for two," according to the number to be elected. The ballot shall not be less than eleven nor more than thirteen inches wide. On the back and outside, when folded, shall be printed, "Official ballot for," followed by the designation of the polling place for which the ballot is prepared, the date of

election, and a facsimile of the signature of the officer or officers charged with the printing of the ballots. (1890, 1st ex. ses., ch. 24, sec. 5; 1889, ch. 218, as amended by 1890, 1st ex. ses., ch. 23, repealed by 1891, ch. 161.)

163. [1239]. Ballots fastened together in books or blocks with stubs.—All ballots for use in each ward or civil district shall be fastened together in convenient numbers in books or blocks, in such a manner that each ballot may be detached and removed separately. Each ballot shall have attached to it a stub of sufficient size to enable the registrar to write a number thereon, and so attached to the ballot that when the same is folded the stub can be detached therefrom without injury to the ballot or exposing the contents thereof. There shall be printed on the stub "No." A record of the number of ballots printed and furnished to each polling place shall be kept and presented to the proper authorities for payment by the officer or officers in each county charged with the printing of ballots. (1890, 1st ex. ses., ch. 24, sec. 6.)

164. [1240]. Number of ballots to be furnished polling places.—There shall be provided for each voting place at which an election is to be held, such a number of ballots that there shall be at least fifty-five for every fifty registered voters at said polling place. Every civil district or ward shall have the same number of polling places as are now or may hereafter be provided by law. Where there are two or more polling places in any one civil district or ward, a qualified voter of said ward or district may vote at the one he prefers. The commissioners of elections shall take notice, or shall notify the officer charged with the printing of ballots, of the number of registered voters in each ward and civil district, at least twelve days before the day of election. (1890, 1st ex. ses., ch. 24, sec. 7; 1907, ch. 436, sec. 19; 1921, ch. 117; 1921, Private, ch. 550.) See sec. 101.

165. [1241]. Instructions as to voting.—The commissioners of elections shall, in addition to the ballots, prepare full instructions for the guidance of voters at such elections, as to obtaining ballots, as to the manner of marking them, and the method of gaining assistance, and as to obtaining new ballots in place of those accidentally spoiled; and they shall respectively cause the same to be printed in large, clear type, on separate cards, to be called "cards of instruction," and

they shall respectively furnish the same and the ballots for use in each such election. (1890, 1st ex. ses., ch. 24, sec. 8.)

166. [1242]. Distribution of ballots and cards of instruction; two registrars at each polling place, and assistants.—The commissioners of elections shall deliver to one of the registrars in each ward and civil district or voting precinct the proper number of ballots and cards of instruction, as required by the provisions of this chapter, on or before the day of election. Where there are two or more voting places in any one ward or civil district, the commissioners of elections, in addition to the two registrars for each ward or civil district, shall appoint additional registrars, so that there shall be two registrars at each voting place. In addition to the registrars appointed herein, the commissioners of elections shall appoint for every polling place one assistant registrar, who shall serve for the day of election only, and that without compensation, and take the oath prescribed for registrars herein. (1890, 1st ex. ses., ch. 24, sec. 9; 1907, ch. 436, sec. 19.)

167. [1243]. Destroyed or stolen ballots, how replaced; report as to.—In case the ballots to be furnished to any ward or civil district, in accordance with the provisions of this chapter, shall fail, for any reason, to be duly delivered, or, in case, after delivery, they shall be destroyed or stolen, it shall be the duty of the registrars in said ward or civil district to cause other ballots to be prepared substantially in the form of the ballots so wanting and to be furnished; and, if there is not time to prepare said ballots, substantially in the form required by the provisions of this chapter, then the registrars may have printed plain white tickets of the most convenient size, containing the names of the candidates as required by law, which shall be voted in the same manner and under the same restrictions as the tickets herein provided for. Within three days after the close of the polls on election days, the registrars having furnished such tickets shall make a written report of the whole circumstances of the loss of the tickets and the printing of the others, under oath, to the commissioners of elections, who shall make such indorsements as they see fit, and transmit the same to the grand jury of the court. (1890, 1st ex. ses., ch. 24, sec. 10; 1907, ch. 436, sec. 19.)

168. [1244]. Registrars, duties of; compensation; failure to serve; oath; list of voters given judges.—In addition to the duties required in the registration of voters, the registrars of election shall be compelled to distribute the tickets pro-

vided at public expense, and such other duties as are provided for herein; and each registrar shall receive for the distribution of tickets on election day the sum of one dollar. If any registrar fails or refuses to serve as herein provided, the officer holding the election shall swear in a bystander of the same political faith of the registrar not serving. The following oath, at the opening of the polls, shall be administered by the officer holding the election to each registrar or bystander appointed to act as registrar: "I do solemnly swear that I will administer the duties of my office without fear or favor, and that I will not attempt to guide, direct, or influence any voter in the exercise of his franchise. So help me God." The bystander sworn in to act as registrar shall receive the same compensation as the registrar is entitled to. The registrar shall have charge of the ballots, and shall furnish them to the voters, in the manner hereinafter set forth. A certified list of the qualified voters in each ward and district in which there are more than one voting place, shall be supplied by the commissioners of elections to the judges at each polling place. (1890, 1st ex. ses., ch. 24, sec. 11; 1907, ch. 436, sec. 19.) See secs. 101, 121, 129, 130.

169. [1245]. Voting shelves, arrangement and number of, and provisions as to.—The officer in each county whose duty it is to hold the election and appoint polling places therein, as herein provided for, shall cause the same to be suitably provided with a sufficient number of voting shelves or tables, at or on which voters may conveniently mark their ballots. Each compartment, table, or shelf shall be so arranged that it shall be impossible for one voter at one table, or in one compartment, to see another voter, at another table or compartment, in the act of marking his ballot. The arrangement shall be such that neither the ballot boxes nor the voting shelves or compartments shall be hidden from the view of the judges of election or those just outside a guard rail which may run in front of the ballot box. The number of such voting shelves, tables, or compartments shall not be less than three for every one hundred voters qualified to vote at such polling places. No persons other than the election officers and voters, admitted as hereinafter provided, shall be permitted within said rail or room where the election is held, except by the authority of the officer holding the election, for the purpose of keeping order and enforcing the law. Each voting shelf or compartment shall be kept provided with

proper supplies and conveniences for marking the ballots. (1890, 1st ex. ses., ch. 24, sec. 12.)

170. [1246]. Regulations for voting at polling places; ballots furnished.—The registrar having the official ballots shall stand not closer than ten feet to the entrance of the room in which the ballot box is placed. A double gangway, with rail guards, may run from the point occupied by the registrar to the said entrance, and no one who has already voted, or who is not ready or qualified to vote, shall come nearer than fifty feet to said rail guard or entrance. As requested by each of the voters, the registrar shall hand the voter one official ballot and a card of instructions, but so that not more voters than there are voting compartments shall be admitted into the room in which are the ballot boxes and the compartments, tables, or shelves. (1890, 1st ex. ses., ch. 24, sec. 13.)

171. [1246a1]. Railway or double gangway for approach and retirement of voters in certain counties.—The judges and officers of any and all legal elections are hereby authorized and empowered to construct a railing or double gangway, through which voters may approach the ballot box and retire therefrom; provided, this section shall only apply to counties of thirty thousand inhabitants or over, under the federal census of 1900, or any subsequent federal census. (1901, ch. 142, sec. 2.) See Code, sec. 6868a8.

172. [1247]. Ballot and certificate of registration numbered; information given voter, when.—Upon receipt of his ballot, the voter shall forthwith enter the room in which the voting is to take place, and present to the assistant registrar his blank ballot and certificate of registration; provided, the registrar shall, upon the demand of any voter made at the time his ballot is handed to him, give to such voter a correct statement of the order in which the titles of the various offices to be filled stand upon the particular ballot furnished to such voter. The assistant registrar shall then number the ballot upon the stub thereof, and also place upon the certificate of registration the same number. (1890, 1st ex. ses., ch. 24, sec. 14.)

173. [1248]. Marking ballot by voter.—He shall then go to one of the voting shelves, tables, or compartments and shall prepare his ballot by marking in the appropriate margin or place a cross (X) opposite the name of the candidate

of his choice for each office to be filled, or by filling in the name of the candidate of his choice in the blank space provided therefor, and marking a cross (X) opposite thereto, and likewise a cross opposite the answer he desires to give in case of a constitutional amendment. (Ib.) See notes under sec. 179; note 1 under sec. 180.

Voter may designate choice of candidate by a cross (X) or by a check mark, because the provision of this section is not mandatory in the sense that a voter who uses a different mark, such as a check mark, will be deprived of his vote, if it is clear that the intention by such mark was to designate such candidate as the voter's choice. *Menees v. Ewing*, 14 *Thomp.*, 399.

174. [1249]. **Folding ballots; stub torn off.**—Before leaving the voting shelf or compartment, the voter shall fold his ballot, without displaying the marks thereon, but so that the words "Official ballot for," followed by the designation of the polling place for which the ballot is prepared, the date of the election, and the facsimile of the signatures of the commissioners of elections, and the numbered stub shall be plainly visible to the officers of election, and shall present to said officers his certificate of registration and marked ballot; and if the numbers on each correspond, the officer of election shall tear off and destroy said stub at once. (Ib.; 1907, ch. 436, sec. 19.)

175. [1250]. **To prevent repeating.**—To prevent repeating by voters, sections 129 and 130 shall be complied with as therein provided. (1890, 1st ex. ses., ch. 24, sec. 14; 1895, 1st ex. ses., ch. 3, sec. 7; 1889, ch. 218, as amended by 1890, 1st ex. ses., ch. 23, and 1890, 1st ex. ses., ch. 24, secs. 5 and 14, was repealed 1891, ch. 161.)

As to constitutionality, see note 2 under 109.

176. [1251]. **Manner and time of voting.**—He shall then vote in the manner provided by law. He shall mark and deposit his ballot, without undue delay, and shall quit said inclosed space or room as soon as he has voted. No such voter shall be allowed to occupy a voting shelf, table, or compartment already occupied by another, nor longer than ten minutes, if other voters are not waiting, nor longer than five minutes in case other voters are waiting. (1890, 1st ex. ses., ch. 24, sec. 14.)

177. [1252]. **Who allowed in room; peace officers.**—No person shall be allowed in the room in which said ballot box and compartments are, except the officers of election and those appointed by the officer holding the election, and none

other, to secure the observance of the provisions of this chapter. In the case of cities having duly enrolled policemen or peace officers, the city authorities may designate the officers to keep the peace at the polls on the outside of the room in which is the ballot box, and not closer than ten feet to the entrance or outer rail guard, if there be such, leading to said room. But in no event shall said policemen or peace officers come nearer to said entrance than ten feet, or enter the room in which is the ballot box, unless specially requested to do so by the officer holding the election; and at any time when requested to do so by said officer holding the election, the said policeman or policemen shall retire from the room in which is the ballot box, and to a point not nearer than ten feet to the aforesaid entrance or rail guard. (1890, 1st ex. ses., ch. 24, sec. 14; 1907, ch. 436, secs. 9-11; 1909, chs. 104, 273.)

178. [1253]. Ballots not taken from polls; other ballots for spoiled ballots.—No person shall take or remove any ballot from the polling place, before the close of the polls. If any voter spoils a ballot, he may successively obtain others, one at a time, not exceeding three in all, upon returning each spoiled one. (1890, 1st ex. ses., ch. 24, sec. 15.)

179. [1254]. Assistance to physically disabled voters.—Any voter who declares to the officer holding the election, that, by reason of blindness or other physical disability, he is unable to mark his ballot, shall, upon request, receive the assistance of the officer holding the election in the marking thereof, and such officer shall certify on the outside that it was so marked with his assistance, and shall give no information in regard to the same. (1890, 1st ex. ses., ch. 24, sec. 16.) See sec. 160.

1. Marking of ballot for any voter who cannot mark his ballot, in certain counties.—By Acts 1915 (Private), ch. 427, provision is made for marking the ballot of any voter who cannot, for any reason whatever, mark his ballot when he so notifies the holder of the election, who shall proceed to mark the voter's ballot in the presence of not less than two of the judges. After marking said ballot, said holder of the election shall indorse on the back thereof, "Marked" and shall sign his name thereto. This provision shall apply in counties having a population of not less than 19399 nor more than 19425, by the federal census of 1910 or any subsequent census; and, therefore, under the federal census of 1910, said act applies in the county of Cocke alone.

The same provision made by Act 1917 (Private), ch. 496, which is made applicable in counties having a population of not less than 17250 nor over 17760, according to the federal census of 1910 or any subsequent federal census; and under the federal censuses of 1910 or

1920, and under *Hall v. State*, 16 Cates, 235 238, 241-243, 246, 247, said provision is applicable in Jefferson county alone.

2. **Ballot marked for other than disabled voters is void.**—A ballot marked for a person neither blind nor physically disabled is void, whether marked by the officer holding the election, or some one else. *Moore v. Sharp*, 14 Pickle, 491, 503, 504.

3. **Officer of election only can mark ballot for disabled voter.**—The officer holding the election is the only person who can lawfully mark ballots for persons blind or otherwise physically disabled to mark their own ballots. *Moore v. Sharp*, 14, Pickle, 491, 504.

4. **Blind voter's ballot marked by one other than the officer holding the election is not void, when.**—But if a blind man, without fault on his part, allows his ballot to be marked by an unauthorized person, believing him to be the officer holding the election, and casts it, his ballot is not thereby rendered void, and it should not be rejected. *Moore v. Sharp*, 14 Pickle, 491, 504.

5. **Blind and physically disabled voter, though illiterate, is entitled to officer's assistance to mark his ballot.**—The fact that a voter can neither read nor write does not necessarily disqualify him to mark his ballot; and, therefore, a voter, unable to mark his ballot by reason of blindness or other physical disability, is entitled to the officer's assistance in marking his ballot, though he be illiterate, or unable to read and write. *Moore v. Sharp*, 14 Pickle, 491, 505, 506.

180. [1255]. Improperly marked ballots not counted, when; ballots must be indorsed and in accordance with law.—If the voter marks more names than there are persons to be elected to an office, or if, for any reason, it is impossible to determine the voter's choice for any office to be filled, his ballot shall not be counted for such office. But this shall not vitiate the ballot so far as properly marked. No ballot without the official indorsement of the chairman of the board of commissioners shall be deposited, and none but ballots provided in accordance with the provisions of this chapter shall be counted. (1890, 1st ex. ses., ch. 24, sec, 17.)

181. [1256]. Offenses of voters; interference with voters; penalty; ballots marked, rejected.—A voter who shall, except as herein otherwise provided, allow his ballot to be seen by any person, or who shall take or remove, or attempt to take or remove, any ballot from the polling place, before the close of the polls, or who shall make a false statement as to his inability to mark his ballot, or place any mark upon his ballot by which it may be afterward identified as the one voted by him, or any person who shall interfere, or attempt to interfere, with any voter when inside said inclosed space, or when marking his ballot, or who shall remain longer than the specified time allowed by this chapter in the booth, after being notified that his time has expired, or who shall en-

deavor to induce any voter, before voting, to show how he marks or has marked his ballot, or aid, or attempt to aid, any voter by means of any mechanical device, or any other means whatever, in marking his ballot, shall be punished by fine not less than ten nor more than one hundred dollars; and election officers shall cause any person so doing to be arrested and treated as one caught in the very act of committing a misdemeanor; and any ballot marked by the voter for identification shall be rejected. (1890, 1st ex. ses., ch. 24, sec. 18.)

182. [1257]. Misdemeanors and misdemeanors in office, when election officers are guilty of; fines, imprisonments, and removal; who to act on failure of election officers.—Any commissioner of elections or registrar who willfully and knowingly refuses or fails to perform the duties herein prescribed shall be guilty of a misdemeanor, and subject to a fine of not less than fifty nor more than two hundred dollars, and to imprisonment in the county jail not less than ten nor more than ninety days, at the discretion of the court. Any officer of election who violates, willfully and knowingly, the provisions of this chapter shall be subject to a fine of not less than fifty nor more than two hundred dollars, and to imprisonment in the county jail not exceeding three months, at the discretion of the court. Any officer of election whose duty it is to hold the elections herein provided for, who willfully neglects, fails, or refuses to open and hold said elections, in accordance with the requirements herein made, shall be guilty of a misdemeanor in office, and be subject to a fine [of] not less than five hundred dollars nor more than two thousand dollars, and, upon conviction, shall be removed from office; and, in event the officer of election of any county neglects, fails, or refuses to hold the election herein provided for, the duties, responsibilities, and authority of the officer shall devolve upon the chairman of the commissioners of elections, who shall exercise, for the time being, the functions of said officer in holding that election. (1890, 1st ex. ses., ch. 24, sec. 19; 1907, ch. 436, sec. 19; 1909, chs. 104, 273.) See secs. 46, 92, 93, 96, 101.

Provision as to failure of election officer to hold election is probably not in force.—The last sentence in this section, containing provisions where the election officer fails to hold the election, is probably not in force. Provision is made in section 96, for filling the vacancy caused by absence of the election officer. The sheriff is no longer charged with the duty of holding elections. See sec. 46. This accounts for the change in phraseology in this section from that contained in the original statute and in the Code of 1896.—Ed.

183. [1258]. This chapter and chapter 9 apply to issue of improvement bonds.—This chapter shall apply to and control all elections for the issuance of improvement bonds, and chapter 9 (sections 102-136) shall apply to and control all elections for their issuance in all counties and cities to which said chapter 9 applies under the federal census of 1880, or may hereafter apply under any subsequent federal census, and all elections held hereafter for the issuance of improvement bonds shall be held under and pursuant to the regulations, provisions, and requirements of said chapters. (1890, 1st ex. ses., chs. 24, 25; 1891, chs. 6, 7.)

1. **Dortch ballot laws enacted, repealed, amended, modified, and remaining in force since 1889.**—Acts 1889, ch. 188, repealed by Acts 1890, 1st ex. ses., ch. 24, sec. 20; Acts 1890, 1st ex. ses., ch. 24, amended by Acts 1891, chs. 6 and 225; 1897, ch. 17; 1901, ch. 147; 1903, chs. 536 and 567.—Ed.

2. **Statute in this chapter is constitutional.**—The statute compiled in this chapter is not unconstitutional because of the educational qualifications required, nor as class legislation, nor as an infraction of the fourteenth amendment to the constitution of the United States, nor because the commissioners and registrars are appointed otherwise than by the people or the county court. Cook v. State, 6 Pickle, 407; State v. Old, 11 Pickle, 731; Moore v. Sharp, 14 Pickle, 506; Peterson v. State, 20 Pickle, 129; Condon v. Maloney, 24 Pickle, 95, 96, 98; Turner v. State, 3 Cates, 602, 608; Murphy v. State, 6 Cates, 533; Hall v. State, 16 Cates, 239, 243, 244, 245; Scott v. Marley, 16 Cates, 403; Fleming v. Memphis, 18 Cates, 341. See Const., p. 376, note 17; p. 535, note 31; p. 544, note 48; p. 603, note 11.

3. **Doubts indicated in notes in Code of 1896 have been removed by legislation and decision.**—The question of doubt as to effect of implied repeals, stated in notes 3 to 14 under section 1258 of the Code of 1896, was removed by Acts 1897, ch. 17, and by judicial construction.

The registration law, under the statutes compiled in section 102, applies in all counties having a population of fifty thousand or over, and in the cities, towns, and civil districts having a population of twenty-five hundred or more, although in counties which have less than fifty thousand inhabitants.

The foregoing application of the said registration law is changed by many special acts noted under section 102, and other sections of said laws.

This chapter on the ballot law applies throughout the state, as shown by section 156.—Ed.

CHAPTER 12.

UNIFORM BALLOT LAW.

Sections 1259-1263 of Shannon's Code were suspended and made inoperative by Acts 1921, ch. 117, making the statutes in the preceding chapter applicable to all counties, cities, towns, and civil districts

in the State of Tennessee, without regard to population, thereby making the preceding chapter the uniform ballot law.—Ed.

CHAPTER 13.

PROCEEDINGS AT THE POLLS.

184. [1264 (846) 1053]. **Mode of Voting.**—All popular elections shall be by ballot. (Const., art. 4, sec. 4, p. 378.)

185. [1265 (847) 1054]. **Ballot is defined.**—A ballot is a ticket or scroll of paper, purporting to express the voter's choice, given by the voter to the officer or person holding an election, to be put into the ballot box. (1796, Mar. ses., ch. 9, sec. 3.)

186. [1266 (848) 1055]. **Ballot box is defined.**—The ballot box is any receptacle provided by the officer or person holding an election for receiving the ballots, which box is to be kept locked, or otherwise well secured, until the election is finished. (1796, Mar. ses., ch. 9, sec. 2.)

187. [1267 (849) 1056]. **To whom ballot is to be delivered.**—Every person qualified to vote, in the manner directed by the constitution, who shall attend for that purpose at any election, shall give to the returning officer, in the presence of the inspectors or judges, a ballot to be put into the box. (1796, Mar. ses., ch. 9, sec. 3.)

188. [1268 (850) 1057]. **In presence of judges; ballot not to be read by officer.**—The returning officer shall receive the ballot in the presence of the judges; and, if the right of the person presenting it to vote is unquestioned, he shall not open and examine, or read the ballot at the time of receiving it, and before he puts it in the box. (1796, Mar. ses., ch. 9, sec. 2; 1831, ch. 98; 1907, ch. 436, secs. 11, 14.) See secs. 46, 92, 96.

Returning officer is defined; duty of judges.—The returning officer is the officer holding the election, and he shall receive the ballot in the presence of the judges, who shall pass upon the qualifications of the voter, as provided in sections 190 to 196, inclusive. Taylor v. Carr, 17 Cates, 255.

189. [1269 (851) 1058]. **Imposition on voter is forbidden.**—No person shall willfully and knowingly impose upon any illiterate voter a ticket, in any election, contrary to his wish and desire, by falsely representing to such voter that the ticket proposed to him is such as he desires.

190. [1270 (852) 1059]. **Oath of voter.**—If any person offer to vote, and none of the judges know that he is a qualified voter; or if his vote is objected to by any candidate or other citizen of this state, the judges of the election, or some one of them, or the officer or person holding the election, may, under the direction of the judges, or a majority of them, administer an oath in the following form or to the following effect: "You do solemnly swear that you will true answers make to such questions as may be asked you touching your qualifications, or right to vote in the present election. So help you God." (1841-42, ch. 31, sec. 6.)

191. [1271 (853) 1060]. **Questions to voter; bystanders may be sworn.**—The judges, or some of them, shall then ask the person offering to vote, the following questions. Are you a citizen of the State of Tennessee? Are you twenty-one years of age? Do you reside in this county? Has your home been in this county six months next before this day? (the day of holding the election). Have you voted at any other time or place in this election? And any other questions the judges may think material to ascertain the qualification of the person offering to vote. And if they, or any of them, have reason to suspect that the person offering to vote has sworn falsely, they, or the officer, or some justice of the peace under their direction, may swear any bystander as to the right and qualification of such person to vote. (Ib.)

192. [1272 (854) 1061]. **Vote, when to be received.**—The said questions having been asked and answered, and the testimony of bystanders taken if desired, if the judges or a majority of them are satisfied that the person offering to vote is a citizen of this state; that he is twenty-one years of age; that he has had his home in the county in which he offers to vote six months next preceding; that he has not voted before at the same election; and that he is otherwise qualified, the judges shall thereupon receive his vote. (Ib.)

193. [1273 (855) 1062]. **Who may vote in local elections.**—In all elections for justice of the peace or constable, or any election in which a civil district, or only a portion of the voters of a county are entitled to vote, the judges of the election shall be satisfied that the party offering to vote is a qualified voter, not only of the county, but of the civil district, or of the portion of the county in which he offers to vote; as to all which matters they may examine him on oath. (Ib.) See sec. 21.

194. [1274 (856) 1063]. **Foreigner, naturalization.**—When any person not a native-born citizen of the United States offers to vote, and his vote is objected to, he shall produce a certified copy of the record of his naturalization, if the same is in his possession, showing that he has been declared, by a competent court, a citizen of the United States. (1841-42, ch. 31, sec. 15.)

195. [1275 (857) 1064]. **Examination as to naturalization.**—If such copy of his naturalization is not in his possession, he may be examined touching it; and if the judges should be satisfied, from his examination, and other oral testimony, if any is offered, that he is naturalized, they shall receive his vote. (Ib.)

196. [1276 (858 1065)]. **Same, when copy of naturalization is not properly authenticated.**—In like manner, the party offering to vote may be examined as to his naturalization, when he produces a copy of the record of his naturalization, and it is objected to on account of authentication. (Ib.)

197. [1277 (859) 1066]. **List of voters.**—When the officer receives the ballot, he shall call the name of the voter, in a distinct voice, and the clerks of the election shall take down, on separate lists or books, the name of every person voting, and shall attest the correctness of them under their hands. (1796, Mar. ses., ch. 9, sec. 3; 1841-42, ch. 31, sec. 11.) See sec. 200.

198 [1278 (860) 1067]. **Counting, when to begin.**—The officer or person and judges appointed to hold an election shall not proceed to or commence counting out the votes given in the election, until the polls shall have been closed. (1796, Mar. ses., ch. 9, sec. 3.) ,

199. [1279 (861) 1068]. **Reading and numbering the ballots.**—When the election is finished, the returning officer and judges shall, in the presence of such of the electors as may choose to attend, open the box and read aloud the names of the persons which shall appear in each ballot; and the clerks, at the same time, shall number the ballots, each clerk separately. (1796, ch. 9, sec. 3.)

200. [1280 (862) 1069]. **Void ballots.**—If there be two tickets rolled up together, or if any ticket contains the names of more persons than the elector has a right to vote for, in either of these cases, such ticket shall not be numbered in taking the ballots, but shall be adjudged void. (Ib.)

Certificate as to void ballot.—The right of the judges of election to adjudge a vote to be illegal, in the cases specified in this section, is beyond question, and it is proper that they should state in their certificate that such ticket was adjudged to be void; and the board of inspectors cannot count such vote. *State, ex rel., v. Board, 6 Lea, 12, 23-26, and especially 24, 25.*

201. [1281 (863) 1070]. Police powers of inspectors at the polls.—The inspectors have authority to maintain regularity and order in the balloting; to keep access to the polls free and unobstructed; to prevent all disorderly and riotous conduct during the election, and during the counting of the votes, after the polls are closed; and, for this purpose, they are vested with all the powers of a peace officer.

202. [1282 (863a) 1071], Hours of election.—In all elections in this state for electors for president and vice president of the United States, governor, members of congress, members of the state legislature, judges of the supreme, chancery, and circuit courts, judges of the county court in those counties where county judges are elected, sheriffs, clerks of the circuit and county courts, registers, trustees, justices of the peace, constables, and attorney-generals for the various judicial districts, the polls shall be opened at nine o'clock a. m. and closed at four o'clock p. m.; except in cities having a population of 15,000 and over, according to the federal census of 1900 or any subsequent federal census, in which cities the polls shall be opened at 9 a. m. and closed at 7 p. m. (1859-60, ch. 75; 1909, ch. 156.)

As to appointment of attorney-general and reporter, see Const., art. 6, sec. 5 (p. 429).

Hours of election in certain counties.—By Acts 1915 (Private), ch. 679, p. 2178, it is provided that the polls shall be opened at nine o'clock a.m. and closed at seven o'clock p.m., in counties having a population of not less than 70,000 nor more than 90,000, according to the federal census of 1910 or any subsequent federal census. Under the federal censuses of 1910 and 1920, and under *Hall v. State, 16 Cates, 235, 238, 241-243, 246, 247*, this act applies in Hamilton county alone.

By Acts 1917 (Private), ch. 623, it is provided that the polls shall be opened at nine a.m. and closed at seven p.m., in all civil districts wholly or partly in the corporate limits of incorporated cities having a population of 130,000 or more, according to the federal census of 1910 or any subsequent federal census; and under the federal censuses of 1910 and 1920, said act applies in Memphis alone.—Ed.

CHAPTER 14.

PROCEEDINGS AFTER THE POLLS ARE CLOSED.

203. [1283 (864) 1072]. **Comparing polls for county officers, time and place.**—The commissioners of elections, holding any election of county officers, shall compare the polls at the courthouse, on the first Monday after said election, and shall deliver to each person elected a certificate of his election. (1835-36, ch. 2, sec. 5; 1907, ch. 436, secs. 15, 16.) See secs. 97, 98, and notes.

1. **Commissioners of election perform duties formerly performed by officer holding election**—Under the statutes cited under the preceding section, the commissioners of elections perform the duties formerly performed by the officer (sheriff or coroner) holding the election; and said commissioners have no more power to examine and count the ballots than the said officer formerly had. *Taylor v. Carr*, 17 Cates, 255, 256.

2. **Election returns may be compared or counted at a private house, when.**—Where the returns of the election were made to the courthouse; but, the county court being in session, the votes were counted or compared in a private house in the county town, there was a sufficient compliance with the requirements of this section, and such action constitutes no ground, in the absence of fraud or misconduct in comparing the polls and counting the votes, for setting aside the election. *McCraw v. Harralson*, 4 Cold., 34, 38, 44, 45 (headnote 5); *Puckett v. Springfield*, 13 Pickle, 273; *United States v. Brewer*, 139 U. S., 287, 35 L. ed., 193.

3. **Comparison of polls at county jail does not vitiate returns.**—The comparing of the polls at the county jail instead of the courthouse, in the absence of all fraud and misconduct, does not vitiate the returns. *Puckett v. Springfield*, 13 Pickle, 264, 272, 273.

4. **Certificate of election is only *prima facie* correct.**—The certificate of election is not conclusive, but merely *prima facie* evidence of the right to the office, and may be rebutted by proof. *Dodd v. Weaver*, 2 Snead, 671.

Certificate of election is *prima facie* evidence of its own correctness, yet it may be falsified by the testimony of witnesses. *Marshall v. Kerns*, 2 Swan, 68, 71; *McCraw v. Harralson*, 4 Cold., 41.

The certificate of election is sufficient evidence of the result, until the contrary is clearly made out by the contestant, upon whom the burden lies. *McCraw v. Harralson*, 4 Cold., 34, 41. See *Anderson v. Gossett*, 9 Lea, 645, 646, 648, 649, 650.

204. [1284 (865) (866) 1073]. **Comparison of polls in election of members of legislature.**—In counties which singly elect a representative, and in those which singly elect two or more representatives, the polls shall be compared at the courthouse in said counties; and, in all senatorial and representative districts, it shall be the duty of the commissioners of elections of each county, within ten days after said election, to certify

and forward to the secretary of state one copy or set of said poll books. (1872, ch. 5, sec. 2; 1907, ch. 436, secs. 9, 10, 17; 1909, chs. 104, 273.) See Code, secs. 123-128; secs. 83-100, 216 of this compilation.

205. [1285. 1074]. Governor, secretary of state, and attorney general, a board of inspectors.—The governor and the secretary of state, and attorney-general for the state are hereby constituted a board of inspectors, whose duty it shall be to compare the vote for senators and joint representatives in the several senatorial and floaterial or representative districts of this state, and declare the result. (1872, ch. 5, sec. 3; 1889, ch. 67.) See sec. 219.

1. **Acts 1889, ch. 67, is palpably unconstitutional and void,** because it does not recite, in its caption or body, the title or substance of the law it purports to amend; but only refers to the former law so sought to be amended, by reference to its chapter and section numbers, and the year of its enactment. See Const., p. 249, notes 86-87a2. But when the words "and attorney-general for the state" are struck out, this section is substantially the same as before the attempted amendment.—Ed.

2. **Whole board must act in conjunction.**—Under this section, the secretary of state and attorney-general can only sit and perform their duties as a board in conjunction with the governor, and they cannot act without him, because the law makes no provision that a majority may act; and, in the absence of such provision, no action can be taken, except by the entire board participating in it. State, ex rel., v. Board, 6 Cates, 516, 520 (headnote 3). See note 2 under sec. 224.

206. [1286 (1075)]. Governor to issue certificate of election.—When the results of such election shall have been ascertained and announced, the governor shall issue certificates of election to the persons receiving the largest number of votes in said district, which certificates shall be *prima facie* evidence of such election; and the commissioners of elections of the several counties, singly electing one or more representatives, shall issue certificates of election to the persons receiving the largest number of votes cast at said election. (1872, ch. 5, sec. 4; 1907, ch. 436; 1909, chs. 104, 273.)

1. **Mandamus against the board, if the governor submits to the jurisdiction.**—The action of the board is ministerial, but the question was reserved, the governor having submitted to the jurisdiction, whether a mandamus will lie to compel him to discharge such a duty, or whether the fact that mandamus is against a board of which the governor is a member, and not against a governor individually, makes any difference. State, ex rel., v. Board, 6 Lea, 12, 20, 21; Bates v. Taylor, 3 Pickle, 325, 326; State, ex rel., v. Board, 6 Cates, 519, 520.

2. **No mandamus or injunction against the governor.**—A mandamus or injunction will not lie against the governor to coerce or restrain him in the discharge of his official duties devolved upon him

by the laws and constitution, however ministerial the act may be; for the power to issue such writs includes the power to enforce the judgment of the court by his imprisonment. *Turnpike Co. v. Brown*, 8 Bax., 490; *Lynn v. Polk*, 8 Lea, 263, 284 (last in the dissenting opinion); *Bates v. Taylor*, 3 Pickle, 319, 324, 325, 326; *State, ex rel., v. Board*, 6 Cates, 519, 520.

207. [1287 (867) 1076]. **Preserving and certifying poll books.**—The judges at every election shall preserve the poll books, or lists of the names of voters, kept by the respective clerks; and said judges, or a majority of them, shall certify that the same do contain a true list of the voters at the respective places of holding elections, which certificate shall be attested by the clerks and officer or person holding the election. (1841-42, ch. 31, sec. 10.)

Section 1288 of the Code of 1896 was superseded by the statute compiled in sections 97 to 100, inclusive, of this compilation.—Ed.

208. [1289 (869) 1078]. **Poll books; evidence.**—Said books or lists, or copies of them, certified by the officer having custody of them, shall be records, and be received as evidence in any case arising out of said election, subject to be impeached, however, by other evidence. (1841-42, ch. 31, sec. 10.) See secs. 97-100.

209. [1290 (870) 1079]. **Poll books or lists may be proved by credible testimony, when.**—If the said officers fail to return the poll books or lists of voters, or copies of them, certified as aforesaid, the same may be proved by other credible testimony, and received as evidence in any case arising out of said election. (Ib.) See secs. 97-100.

210. [1291 (871) 1080]. **Copies to be given to parties elected, when.**—The officer or person holding the election, within ten days after every election, shall at the request of any person elected to serve in the general assembly, or other person in his behalf, cause fair copies of the lists of votes, and of the number of ballots for each candidate, to be made out and delivered to the person requesting the same, or to his order, which lists and numbers shall be signed by the returning officer. (1796, Mar. ses., ch. 9, sec. 9.)

CHAPTER 15.

CASTING VOTE, RETURNS, AND COMMISSIONS.

211. [1292 (872) 1081]. **Tie and casting vote.**—If there is a tie vote between two or more persons having the highest

number of votes for the same office, in all cases where the office is filled by the votes of a single county, the commissioners of elections shall give the casting vote between such persons. (1796, Mar. ses., ch. 9, sec. 3; 1835-36, ch. 2, sec. 6; 1907, ch. 436, sec. 19.) See sec. 98.

Formerly, the returning officer gave the casting vote.—Under this section, as it formerly existed, the returning officer (the sheriff or coroner, as the case might be) was required to give the casting vote, in case of a tie vote; but under Acts 1907, ch. 436, and especially section 16 thereof, imposing upon the commissioners of elections the duties of the sheriff or coroner in holding elections, and making them the returning board of officers, it would seem, logically and necessarily, to follow that the commissioners of elections are required to give the casting vote, in case of a tie vote, which the sheriff or coroner, as the returning officer, formerly gave.—Ed.

212. [1293 (873) 1082]. New election, if there be a tie vote in a district election.—If the office is filled by the votes of a single district, the election is void in the case mentioned in the preceding section, and the commissioners of elections shall proceed to advertise and hold a new election. (1835-36, ch. 1, sec. 11; 1907, ch. 436; 1909, chs. 104, 273.)

Tie vote for constable renders the election void.—While a tie vote for constable renders the election void under this section, and the holder of the office under such election would be a usurper; but where, counting all the votes returned as cast, the holder of such office under a certificate of election and induction into office is not a usurper of the office, without color of authority, although the elimination of certain illegal votes cast, counted, and returned for such holder of the office would make a tie vote in the election. *State v. Burchfield*, 12 Lea, 34.

213. [1294 (874) 1083]. Certificate of election.—The person having the highest number of votes, including the casting vote if necessary, given for any office filled by the votes of a single county, shall be declared duly elected, and a certificate of his election shall be made out by the commissioners of elections of the county, and delivered, on demand, to the person elected. (1835-36, ch. 2, sec. 5; 1907, ch. 436; 1909, chs. 104, 273.) See sec. 98, and notes.

1. Commissioners of elections as a returning board cannot go behind returns.—The commissioners of elections as a returning board are ministerial officers, vested with no judicial powers, and they must ascertain and declare the result as shown by the returns of the election, if in due form; and they have no power or right to look beyond the returns, but their powers are confined to summing up the returns made to them by the election officers holding the election, to announcing the result, and to issuing a certificate of election to the candidate receiving the greatest number of votes as returned. *State, ex rel., v. Wright*, 10 Heis., 237, 252-255; *State, ex rel., v. Board*, 6 Lea,

12, 24, 25; State, ex rel., v. Gossett, 9 Lea, 644, 648-650; Taylor v. Carr, 17 Cates, 257.

2. Commissioners cannot do so to correct their certificate.—Where the commissioners of elections, as a returning board, have once made their certificate of election, they cannot go behind the returns made to them, and throw out a part of the same, and amend their certificate; for having exhausted their powers by making the certificate, any subsequent certificate would be a nullity. State, ex rel., v. Gossett, 9 Lea, 644, 648-650.

3. Suit going behind returns is a contest of election.—A suit which undertakes to go behind the certificate of the returning board is a contest of an election, which, in the case of a sheriff, must be made under section 1309. State, ex rel., v. Gossett, 9 Lea, 644; Adcock v. Houk, 14 Cates, 276.

214. [1295 (875) 1084]. Return of election to secretary of state.—In all cases in which the persons elected by the vote of a single county, or fraction of a county, are commissioned by the governor, the commissioners of elections of such county shall make return of such election to the secretary of state, by mail, to be deposited in the postoffice, within three days after comparing the polls. (1907, ch. 436; 1909, chs. 104, 273.) See secs. 98, 99.

This section applies to justices of the peace, because they are elected by a vote of a fractional part of the county, and are commissioned by the governor. Puckett v. Springfield, 13 Pickle, 270. See Code, sec. 1319.

215. [1296 (876) 1085]. Commission to persons appearing to be elected.—A commission may issue to the person appearing from such returns to be elected, on the receipt of such returns by the secretary of state, or it may issue, on the production of the certificate of election, to the person named therein. See Code, sec. 385, and notes; sec. 224 of this compilation, and notes.

216. [1297 (877) 1086]. Return to qualifying office.—In all other cases of persons elected by the vote of a single county, or district thereof, the commissioners of elections of the county shall make return of the election to the tribunal before whom the officer is required to qualify. (1907, ch. 436; 1909, chs. 104, 273.) See sec. 204.

217. [1298 (878) 1087]. Certificate of election to general assembly.—The person receiving the highest number of votes for member of the general assembly shall be declared duly elected, and a certificate of election issued to him, and a statement of the vote made out and transmitted immediately to the secretary of state.

218. [1299 (879) 1088]. **TriPLICATE RETURNS, WHEN.**—The commissioners of elections of each county shall make out triplicate returns of the election in their county for judicial officers, for attorneys-general, and for members of congress, and forward one copy by mail to the secretary of state, another copy by a different mail to the governor, and deposit the third copy in the office of the county court clerk. (1907, ch. 436; 1909, chs. 104, 273.) See secs. 98-100.

219. [1300 (880) 1089]. **COMPARISON OF RETURNS.**—The governor and secretary of state, and the attorney-general for the state, shall, as soon as the returns are received, in the presence of such electors as choose to attend, compare the vote in these several cases, and declare the person receiving the highest number of votes duly elected. (1889, ch. 67.) See sec. 205, and note.

Words to be struck out as unconstitutional.—The words “and attorney-general for the state” in this section should be struck out, as unconstitutional, because Acts 1889, ch. 67, from which they were taken, is unconstitutional. See note under sec. 205.

220. [1301 (881) 1090]. **Messenger to bring returns.**—The governor may employ a special messenger to bring the returns filed with the clerk of the county court, in case those sent by mail fail to come to hand, the expenses of which messenger shall be paid out of the treasury of the state. (1812, ch. 27, sec. 5.)

221. [1302 (882) 1091]. **Tie vote; casting vote; new election.**—If there is a tie vote between two or more having the highest number of votes for any congressional district, the governor will give the casting vote; for any judicial officer or attorney-general, the election shall be declared null, and a new election forthwith ordered. (1812, ch. 27, sec. 6; 1853-54, ch. 32, sec. 5.)

222. [1303 (883) 1092]. **TriPLICATE RETURNS OF GOVERNOR'S ELECTION.**—The commissioners of elections of the several counties shall make out triplicate returns of the votes cast in each county for governor, one copy to be directed to the speaker of the senate, and transmitted by mail; one copy, similarly directed, to be delivered to the senator or representative of his district; the third to be deposited in the office of the county court clerk. See secs. 97-99.

223. [1304 (884) 1093]. **Messenger for same.**—The general assembly may, if it becomes necessary, send a special messenger for the copy of the return of any particular county

deposited with the clerk of the county court. See secs. 97-99.

224. [1305 (885) 1094]. **Commissions.**—The governor will issue commissions to members of congress, judges, chancellors, or attorneys-general, declared elected upon an estimate of the vote as above prescribed.

See Code, sec. 385; secs. 11, 214, 215 of this compilation.

1. Governor cannot be mandamused to issue commission.—The governor cannot be coerced or restrained, by mandamus or injunction, in the issuance of these commissions. *Bates v. Taylor*, 3 Pickle, 319; *State, ex rel., v. Board*, 6 Cates, 516, 519, 520; *State, ex rel., v. Malone*, 4 Thomp., 170.

2. Question of necessity of concurrence of secretary of state in the issuance of the commission was reserved in *Bates v. Taylor*, 3 Pickle, 333. See note 2 under sec. 205.

3. Commission is ineffective when the election was void.—Where the election was void, and is so declared to be by competent tribunal, the governor's commission to the candidate shown to be elected by the election returns cannot have any effect. *Barry v. Lauck*, 5 Cold., 588, 590, 599 (headnote 5); *State, ex rel., v. Wright*, 10 Heis., 237, 253 (headnote 4); *State, ex rel., v. Malone*, 4 Thomp., 171.

The returning officer's certificate of election to one as sheriff, and his induction into office by the county court, will not affect the rights of the candidate actually elected. *State, ex rel., v. Wright*, 10 Heis., 237, 253 (headnote 4).

4. Commissions are greatly useful as prima facie evidence of title, and also for protecting third parties under judicial acts performed by persons holding them, although the commissions may be void because issued without authority. *State, ex rel., v. Malone*, 4 Thomp., 171, citing cases.

5. Title to elective office comes from the people, and not from the commission.—While an elective office is still a species of property, yet the title thereto comes from the people, through the election, and not from the commission of the executive or other formality; and the term of the elected officer may begin, notwithstanding his failure to receive a commission. *State, ex rel., v. Malone*, 4 Thomp., 149, 169-172.

225. [1306 (886) 1095]. **Returns, how made.**—Returns of an election shall be sealed up and directed to the officer to whom the return is to be made; and, when required to be sent by mail, shall be deposited in the postoffice, and the receipt of the postmaster taken therefor.

226. [1307 (887) 1096]. **Forms of return, etc.**—No return, poll list, or certificate, made under the provisions of this chapter, is to be set aside or rejected for want of form, nor on account of its not being strictly in accordance with the directions herein contained, if the same can be clearly understood; and any such return, poll list, or certificate, signed by a majority of the inspectors or returning officers, is sufficient.

Provision that informality will not invalidate the returns applies under subsequent legislation, when.—The provision that the returns, poll lists, or certificates shall not be invalidated by any formality, if the same can be clearly understood, is a general provision, and would equally apply to the same documents, although made returnable, by a subsequent law, to different officers. *State, ex rel., v. Board, 6 Lea, 22.*

CHAPTER 16.

VOTING BY ABSENT VOTERS.

227. [1174b1]. What absent voters may vote.—Any voter, only when required by his regular business or occupation and his habitual duties to be absent from the city or county in which he is registered or is entitled to a vote by law in this state, may vote at any election held in his precinct or district for any purpose whatsoever, provided such voter complies substantially with the following conditions, to wit: (1917, ch. 8, sec. 1.)

228. [1174b2]. Voter intending to vote by registered mail must give notice, to whom and when.—Such voter shall give notice in writing of his intention to vote by registered mail under the provisions of this chapter to the registrar of his precinct, provided the general registration laws in this state apply thereto, and if said registration laws do not apply in his precinct or district, then such written notice shall be given to the secretary of the board of county election commissioners of his county, hereinafter called the secretary, if there be one, otherwise, to the chairman of said board, hereinafter called the chairman, not less than ten days nor more than thirty days prior to any legalized or other primary or general election in which he desires and is entitled to participate; provided he be within the confines of the United States. But if such voter be outside the limits of the United States, in any of its territories or elsewhere, then he must give such notice not less than thirty days or [nor] more than ninety days prior to the date of such primary or general election. (Id., subsec. 1.)

229. [1174b3]. Ballot to be mailed to voter upon receipt of notice delivered in person or by registered mail; postage to be furnished by voter.—When such notice is filed, either with the registrar, or secretary, or chairman for the county in which such voter claims the right to vote, such registrar, secretary, or chairman shall promptly forward by registered

mail a legal ballot to be cast by such voter, in such primary or general election, with all necessary blanks and full instructions to the voter to enable him to comply fully with all the provisions of this chapter. But the voter making such application shall furnish to the registrar, secretary, or chairman the required amount of postage to be used by such officer in forwarding such ballot, together with definite information as to the exact address to which such registered ballot shall be mailed. Such written notice by such voter shall be delivered in person or sent by registered mail to such officer, and may be addressed to and received by either of them, and a registry receipt signed by such officer shall be evidence of the receipt of such written request. (Id., subsec. 2.)

230. [1174b4]. **How the ballot shall be mailed and addressed.**—When the voter is within the United States, or any of its territories or dependencies, such ballot shall be inclosed in a sealed envelope and this within another envelope addressed to the voter at the postoffice designated by the voter in his written notice hereinbefore mentioned; and when the voter is not within the jurisdiction of the United States, the envelope enclosing the ballot shall be directed to the voter in care of the nearest American consulate, and when the voter is in the service of the army or navy, same shall be directed to him in care of his commanding officer. (Id., subsec. 3.)

231. [1174b5]. **Ballot shall be opened and filled up in the presence of whom, and returned by registered mail.**—Upon receipt of such registered letter forwarded by the registrar, secretary, or chairman, the voter shall not open the sealed envelope containing the ballot, except it be in the presence of the postmaster or assistant, or of an officer authorized by law to administer oaths; and when in the presence of such official, and in his full view, such sealed envelope shall be opened, and then and there, in the presence and view of such official, be marked or filled up by the voter, or in case of his inability to do so, by the official under his direction, and said ballot shall then be folded and placed within an envelope provided by the registrar, secretary, or chairman, for that purpose, and the same shall then be carefully sealed, and the official shall write his name across the seal of the envelope inclosing the ballot, and sign the voucher printed upon said envelope, and the voter shall likewise sign a voucher, as hereinafter indicated; such envelope inclosing said ballot to be

inclosed within another envelope directed to the registrar, secretary, or chairman, and sent by registered mail immediately thereafter, such registration to bear the same date as the voucher of said official. (Id., subsec. 4.)

232. [1174b6]. If voter be outside of the United States, his ballot shall be prepared and mailed back, how and by whom.—A voter receiving his ballot outside the limits of the United States, except when in the service of the army or navy, shall prepare and seal his ballot in the presence of the American consul or his assistant, if the letter was mailed in care of the consulate, preserving the secrecy of the ballot, and it shall then be forwarded by the consulate, within two days thereafter, in the sealed envelope provided as aforesaid, addressed to the registrar, secretary, or chairman. If the voter is in the service of the army or navy, his commanding officer, or some other officer duly delegated by him, shall witness and register the return envelope by first mail leaving his command or ship, after having complied with all the requirements of this chapter. (Id., subsec. 5.)

233. [1174b7]. Name of applicant, if eligible, to be enrolled, and certificate to be made and forwarded, with return envelopes and instructions.—The registrar, secretary, or chairman, upon receipt of the written application for a ballot to be voted under this chapter, shall satisfy himself that the applicant is entitled to vote in the election in which he seeks to participate, and shall enroll his name and address, if found eligible, in a book to be provided by the municipality or county, as the case may be, and make out the certificate and coupon attached, hereinafter provided, and forward same to the applicant voter by registered mail, as hereinbefore set forth, and shall also inclose in said letter, the following:

- (a) An envelope containing the folded ballot, sealed and marked "Ballot Within."
- (b) An envelope for resealing the marked ballot, form of which is hereinafter provided, and therein called "Voucher."
- (c) An envelope properly addressed to such register, secretary, or chairman, in which the sealed envelope containing the ballot is to be returned to the officer by the voter.
- (d) A printed slip, giving full instructions, stating the offices to be filled, the number to be voted for in each instance, how to mark the ballot, how it must be prepared and returned, and all other necessary information to enable the

voter to cast a legal ballot under this chapter. (Id., subsec. 6.)

234. [1174b8]. Form of certificate.—The certificate hereinbefore mentioned, shall be substantially as follows:

"This is to certify that.....is a qualified voter in the state of Tennessee, county of....., city of....., ward or district No., and is entitled to vote in a (primary or general) election, to be held on the.....day of....., 19..... Application for ballot was received on theday of, 19...., from.....(postoffice) and mailed to the applicant at.....(postoffice) as requested, on the.....day of....., 19..... A copy of this certificate is filed with the letter of application.

No.....

(Signed)

Registrar, Secretary, or Chairman."

(Id., subsec. 7.)

235. [1174b9]. Envelope marked "Ballot Within" not to be opened except in whose presence; witness to ballot.—The voter shall not open the sealed envelope marked "Ballot Within," except in the presence of a postmaster, his assistant, or an officer having authority to administer oaths, who is to witness and certify the act of preparing and sealing the ballot as hereinbefore stated. (Id., subsec. 8.)

236. [1174b10]. Ballot may be marked, how; certificate by officer.—The voter may mark his ballot secretly, to the extent that the officer may not know the names of the candidates voted for, if the voter so desires; but this is at the option of the voter. When the ballot has been marked or prepared and folded and sealed in this envelope furnished for that purpose, the officer shall fill out the following blank, detach the coupon from the certificate, and place it within the return envelope containing the sealed ballot, viz:

"The name given by the voter is.....; his color is.....; height.....; age.....; color of hair.....; color of eyes.....; his weight estimated at.....pounds; his state, county and precinct where entitled to vote.....

To the best of my knowledge the above information is

correct, and the applicant has complied with the requirements of the law of the State of Tennessee.

(Signed)....."

Postmaster, Clerk, Notary, or other official designation.

The certificate made in territory, without the jurisdiction of the United States, shall be signed by the consular officer; and if the voter is in the service of the army or navy of the United States, it shall be signed by some commissioned officer or other person duly delegated by him. (Ib.)

237. [1174b11]. Voucher certificate by voter, and witness thereof.—On the back of the return envelope, containing the marked ballot, shall be the following voucher:

"This is to certify that the inclosed ballot was received by me as per my application. The envelope marked "Ballot Within" was opened by me in the presence of..... (stating the officer's name and official designation) and was marked or prepared or filled by me, or under my direction, and then and there sealed as provided by the law of the State of Tennessee.

This.....day of....., 19.....

Attest: (Signed).....

Official designation. Voter's name."

The voucher shall be written or printed in substantially the foregoing form on the back of said envelope and the name of the officer or some part of it, shall be so written across the seal as to prevent the same being tampered with or opened without detection. (Id., subsec. 9.)

238. [1174b12]. Ballots, etc., to be furnished by the state comptroller; how prepared; unused ballots to be returned.—It shall be the duty of the comptroller of the State of Tennessee to have prepared all necessary blanks and information slips and furnish same, at the expense of the state to all registrars and county boards of election commissioners in this state; however, the ballots to be voted under this chapter shall be prepared under the direction of the county board of election commissioners, who shall furnish to the registrar a sufficient number of ballots, each properly sealed in the envelope marked "Ballot Within," and take his receipt for the same. Within five days after the election, the registrar shall return to the commissioners of elections all unused ballots in their original sealed envelopes, and a certified list of voters with their addresses who have received ballots to be voted

under this chapter. Where the ordinary three by seven ballot is prepared, no names shall be written or printed thereon before the same is received by the applicant voter, but only the offices to be filled shall be written or printed thereon, and where the registration laws of the State of Tennessee apply, the names of the candidates for the various offices as have then certified under said law will be written or printed thereon, leaving sufficient space for the voter to write a name or names not found on said ballot. (Id., subsec. 10.)

Three by seven ballot law is not in force, since Acts 1921, ch. 117, making the Dortch ballot law applicable to all counties, cities, towns, and civil districts in the state, regardless of population.—Ed.

239. [1174b13]. Ballot to be recorded and deposited in sealed box, with certificate; notice for sealed ballot boxes which shall be delivered, when; seal broken, when.—Upon receipt by the registrar, secretary, or chairman of the registered letter containing the sealed ballot, properly authenticated, as prescribed by this chapter, such officer shall note on his record, opposite the name of the voter, in ink, the date of the receipt thereof, on which date he shall deposit, in a sealed box furnished by the county for that purpose, the envelope containing the ballot, without opening or changing the envelope in any way whatever. This sealed box for each of the wards, voting precincts, or districts, shall be delivered by the officer having same in his custody to the officer, or one of the judges holding the election, not later than the closing hour on the day of the election. The registrar, secretary, or chairman must furnish to the officer or judge holding the election, along with the sealed box, a certificate as follows:

"I hereby certify that I received out of the United States postoffice all the sealed envelopes contained in the sealed box this day delivered to.....(name of officer holding election) there being.....(number of) ballots therein, without the same having been altered since they were received by me, or being out of my possession after having been received. Witness my hand on this.....day of....., 19.....

(Signed).....
Registrar, Secretary, or Chairman."

It shall be the duty of such registrar, secretary, or chairman, to give notice to an officer or judge of election at all voting places where voters desire to cast their ballots by registered mail, under the provisions of this chapter, in ample time for the sealed boxes to be delivered to the proper elec-

tion officers. These sealed boxes may be delivered not more than three days before the election, and not later than the hour of closing of the polls according to law. The election officer or judge, when receiving such sealed box containing the sealed ballots, shall retain the same in his possession until the seal is broken in the presence of all the judges and clerks of election immediately after the polls are closed on the day of election. (Id., subsec. 11.)

240. [1174b14]. **Notice of names of applicants as absent voters to be posted.**—At least seven days prior to the election in which the ballot is designed to be cast, the registrar or other officer to whom application for ballots has been made under this chapter shall post in a conspicuous place at the courthouse and also at the municipal hall, in the case of a city election, a full and complete list of names of those voters making application for ballots under this chapter, stating the district or ward in which each desires to vote. (Id., subsec. 12.)

241. [1174b15]. **Election officer or judge to receipt for the sealed box.**—When the sealed box is delivered by the registrar to the officer or judge of election, such officer or judge shall give receipt for the same, stating the condition of the box, the date of its receipt, and shall preserve the same and have the same at the polls on election day, in order that the ballots therein may be properly deposited and counted. (Id., subsec. 13.)

242.—[1174b16]. **Sealed ballots received after delivery of sealed ballot box to be delivered to election officer or judge.**—In case any sealed envelope should be received by the registrar, secretary, or chairman, after the sealed box has been delivered to the officer of election, it shall be his duty to forthwith deliver same in its sealed condition to such officer or judge of election, to be deposited in said sealed box, if this can be done by the exercise of due diligence, before the polls close on the day of election. A like receipt shall be taken for the same. It shall be the duty of the officer designated to hold the election, or the judge, to keep said sealed box or sealed envelopes in his own possession, securely sealed, and have the same present on the day of election, as hereinbefore stated. (Ib.)

243. [1174b17]. **Sealed box to be opened, and absent voters registered as if present; if qualified, the ballot is opened and vote deposited in the regular ballot box; if not qualified,**

the envelope is not opened, but return thereof shall be made.

—At the close of the regular balloting, the sealed box is to be opened by the judges of election in the presence of all the judges and clerks and the officer, as each envelope is removed from the box, the name of the voter is to be called and checked as if the voter were present voting in person. If it is found that he has paid his poll tax, as required by law, or that he is not liable for poll tax, and that he is otherwise qualified and is legally entitled to cast his vote at the time and place where his ballot is thus offered, the envelope is then to be opened, the folded ballot taken therefrom and deposited in the regular ballot box, without being examined or unfolded. But if the judges of election shall determine that the applicant is, for any reason, not entitled to vote, the envelope containing his ballot shall in no case be opened, but the same, in its sealed condition, shall be returned along with the other records of the election, as part thereof, and shall be preserved by the officers whose duty it is to have custody of all such records (Id., subsec. 14.)

244. [1174b18]. Ballot envelopes and records to be certified, with reasons for rejecting ballots; misdemeanor to receive illegal ballot or to reject legal ballot.—When all ballots have been accounted for and either voted or rejected, the empty envelopes from which the voted ballots were taken, as well as the sealed envelopes containing the rejected ballots, if any, together with all other records, relating thereto shall be made part of the election records, and certified to proper authorities. The judges, or a majority of them shall certify their reason for rejecting each and every ballot rejected by them. They shall be guilty of a misdemeanor if they receive any ballot for an illegal voter, or reject any ballot from a legal voter, where he has complied with the law governing his application to vote. (Id., subsec. 15.)

245. [1174b19]. Fee of registrar, secretary, or chairman.—The registrar, secretary, or chairman shall receive a fee of twenty-five cents, to be paid as other expenses of election, which shall be in full for all his services in connection with the record of each voter at each election. (Id., subsec. 16.)

246. [1174b20]. Felony for illegal voter to vote or attempt to vote, or for another to aid or abet therein; imprisonment; venus.—It shall be a felony for any person, who, for any reason, is not legally entitled to vote at the time and place

where he votes or attempts to vote under this chapter, to vote or to offer to do so. It shall also be a felony for any person to aid or abet another in so voting illegally or offering to do so, and every person connected therewith, with knowledge of its illegality, shall be sentenced to the penitentiary not less than one nor more than three years, or confined in the county jail or workhouse, at the discretion of the trial jury. The venue shall be in the county where such fraudulent ballot is offered, without reference to the place it was prepared or mailed. (Id., subsec. 17.)

247. [1174b21]. Felony for election officers to fail to perform duties, or to prevent a legal vote or to cause an illegal vote; punishment.—It shall also be a felony for any of the election officials connected in any way with the casting of a ballot by registered mail, to fail, willfully and fraudulently, to perform any act required of him hereunder, or to do any act in connection therewith for the fraudulent purpose of preventing a legal voter from casting his ballot or of causing an illegal vote to be cast in any way or manner to do any act fraudulently, which may be calculated to affect the result of the election. Such offender shall be punished, as stated in the preceding section. (Ib.)

248. [1174b22]. Unconstitutionality of part shall not vitiate other parts.—If any part or portion of this chapter shall be void, ineffective, or unconstitutional, this shall not vitiate other portions of this chapter. (1917, ch. 8, sec. 2.) See note under sec. 3052a36 of the Code; note 2 under sec. 3273a120.

249. [1174b23]. Liberal construction in favor of right to vote; technical irregularities not favored; substantial compliance.—Each and every part of this chapter shall be liberally construed in favor of the right of the elector to cast his ballot under this chapter, as though he were present in person, casting the same. No mere technical irregularity shall be ground for rejection of any ballot, but if the provisions of this chapter are substantially complied with by the voter in good faith, then his ballot shall be accepted and counted. (Id., sec. 3.)

250. [1174b24]. Primary elections included.—The provisions contained in sections 227-249 shall be construed and held to apply to all primary elections to be hereafter held under and in accordance with the laws of this state. (1917, ch. 104, sec. 1.)

251. [1174b25]. **Duties imposed on officers in regular elections are imposed upon primary election officers.**—Wherever a duty or duties is imposed upon or required of the chairman, secretary, or board of county election commissioners, in the aforesaid sections, 227-249, the same duty or duties with respect to a primary election is imposed upon and required of all county primary election boards, their chancellors, or secretaries, respectively. (Id., sec. 2.)

252. [1174b26]. **Violation by chairman or secretary of primary elections punishable as such by chairman or secretary of regular elections.**—A violation of any of the provisions of said original act contained in the aforesaid sections 227-249, as hereby amended, by the chairman or secretary of the board of county primary elections, shall be deemed and treated as the same offense subject to the same punishment as is provided for the same violations by the chairman or secretary of the county election commissioners. (Id., sec. 3.)

Registration of absent voters is provided for in sections 132 to 136, where registration of voters is required by law in order to qualify them to vote.—Ed.

CHAPTER 17.

PRIMARY ELECTIONS ARE LEGALIZED AND REGULATED.

253. [1377a1]. **Definition of primary elections.**—A primary election, within the meaning of this chapter, is an election held within the state, county, city, district, or subdivision thereof, as the case may be, by the members of any political party, or by the voters of some political faith, for the purpose of nominating a candidate or candidates for office; and ward committeemen and district committeemen; provided, that one poll list shall be returned to the county court clerk, the other to the chairman of the governing committee. (1901, ch. 39, sec. 1; 1905, ch. 353.) See sec. 267.

254. [1377a2]. **What general election laws apply to primary elections.**—All primary elections held in this state by various political parties shall be held and conducted in the same form and manner and under the same requirements as are or shall be provided by law for the holding of regular state elections, except in such particulars as are herein excepted. (1901, ch. 39, sec. 2.)

255. [1377a3]. **Offenses against general elections are offenses against primary elections.**—Any act or deed pronounced an offense by the general laws of the state concerning elections shall also be made an offense in all primary elections, and shall be punished in the same form as is provided for the punishment of similar offenses by the general laws; and all the penalties and provisions of the general laws shall apply in such cases with equal force, and shall be as effective as though fully set out in this chapter. (1901, ch. 39, sec. 3.)

256. [1377a4]. **Notice of election to contain what; how and by whom given.**—Whenever it shall be desired by the committee or governing authority of any political party to hold a primary election under the provisions of this chapter, said committee or governing authority shall, at least thirty days prior to such primary election, give public notice thereof, by posting such notice at the courthouse door and at one or more public places in each ward or district in the county in which election is to be held, or by publication in a newspaper, if there be one published in said district or county, once a week for at least two weeks prior to said primary. Such notice shall state the date of such proposed primary election, the hours between which it will be held, the offices for which candidates are to be nominated, and the places at which polls will be opened at such primary election. (1901, ch. 39, sec. 4.)

257. [1377a5]. **Who may vote.**—All persons who are legal voters shall have the right to participate in such primary elections, subject to such additional qualifications as may be prescribed by the committee or governing authority. (1901, ch. 39, sec. 5.)

258. [1377a5]. **Legal voters may vote, when.**—In all counties, districts, wards, or precincts, all legal electors, or who will be legal electors at the regular elections at which the candidate is to be voted for, shall have the right to vote at any primary election held by any political party, if they conform to the conditions and qualifications prescribed by the committee or governing authority of the political party having direction and control of such primary, by applying at the polls of the precinct in which they reside and making known the fact that they conform to such conditions and qualifications as have been so prescribed. (1901, ch. 39, sec. 6.)

259. [1377a7]. **Right to vote challenged and determined.**

—In case the officers of such primary election be in doubt as to the right of any person to vote, such person shall be sworn by the judges of election and examined as to his right to vote. Any bystanders may also challenge the right of any person to vote, and in all cases such person whose right to vote is so challenged shall be sworn and examined as hereinbefore set forth. (Ib.)

260. [1377a8]. Officers of election; number and duties.

—The officers for each election precinct, ward or district, in all primary elections held under the provisions hereof, shall be the same number as required and designated by law to hold regular state elections, and their duties and responsibilities shall be precisely the same as those of legally appointed and regularly qualified officers of regular state elections. (1901, ch. 39, sec. 7.) See secs. 83, 87, 92, and 95.

261. [1377a9]. Officers appointed, how; oath.—They shall be appointed by the regularly organized and constituted committee or governing authority of the political party holding such primary election, and shall, before entering upon the discharge of their respective duties, take the same oath required to be taken by officers of regular state elections. (Ib.) As to oath, see secs. 51 and 52.

262. [1377a10]. Officers selected, how.—The officers in each primary election precinct, ward or district shall be selected from list furnished by the ward or district committeemen, at least ten days before such primary election, and shall be as nearly equally divided as possible as to judges, clerks, and officers among the various candidates. (Ib.)

263. [1377a11]. Powers and restrictions of officers.—The officers of all primary elections, held under the provisions hereof, shall have the same power and privileges as officers of regular state elections, and shall be subject to the same restrictions, limitations, and conditions. (Ib.)

264. [1377a12]. Offenses in officers of regular elections are offenses in primary election officers.—Any act or deed denounced by general law as an offense in the case of officers of regular state elections is hereby declared to be an offense in the case of officers of such primary elections, and shall be punished in the same form and manner as is prescribed by general law. (Ib.)

265. [1177a13]. Candidates to submit name to govern-

ing authority, and to comply with conditions; then declared to be candidate by same.—Any person desiring to submit his name to the voters in a primary election shall, not later than fifteen days next preceding the holding of such primary election, apprise the committee or governing authority of the political party holding such primary of the fact that he is a candidate, and upon complying with the conditions prescribed by the committee or governing authority for the regulation of candidates, shall be declared to be a candidate by the committee or governing authority of such political party. (1901, ch. 39, sec. 8.)

266. [1377a14]. Names of other candidates not printed on ballots, but voted for, how.—Any person who has not given such notice to the committee or governing authority, or who has not complied with the conditions prescribed by the committee or governing authority for the government of candidates, shall not have his name printed on the ballots used in such primary election; but any person desiring to vote for another than the persons whose names are printed on such ballots shall have the right to do so by writing the name of the person for whom he desires to vote in the space on the ballot set apart for the names of the candidates for such office as he may desire such person so voted for to hold. (Ib.)

267. [1377a15]. Election returns, how and when made; punishment for changing or altering is same as in regular elections.—Within such time as is provided by law in the case of state elections and in the same manner, the election returns in all primary elections shall be deposited with the committee or governing authority of the political party under whose direction and control such primary election was held, at such place as the committee or governing authority shall designate at which to receive such returns, and any person who shall change, or in any wise alter such returns, shall be punished in the same form and manner as is provided by general law for the punishment of any person who changes or in any wise alters the returns of a regular state election. (1901, ch. 39, sec. 9.) See sec. 253.

268. [1377a16]. Result, how declared.—The duly authorized and constituted committee or governing authority in the county or district, in which a primary election may be held hereunder, is hereby empowered to count the votes received by all candidates in such primary elections, and to declare the candidate or candidates, in cases where candidates

for more than one office are to be nominated, receiving the highest number of votes, the nominee of such political party for the office for which he was voted for at such primary election. (1901, ch. 39, sec. 10.)

269. [1377a17]. **Tie vote or contest determined by governing authorities.**—In all cases of a tie vote or contest, the committee or governing authority of the political party holding such primary election shall have the power to hear and determine such contest and decide who shall be entitled to the nomination. (Ib.)

270. [1377a18]. **No candidate receiving a majority, the two candidates receiving the highest votes to run off, when; proceedings.**—In case there be more than two candidates for nomination to any office voted for in said primary, and no one candidate receives a majority of the votes cast at said primary election, then the committee or governing authority of the political party holding such primary election can, if it sees fit, order, for the two candidates receiving the highest number of votes, a run off to determine the party candidate for said office; provided, however, if this section of the law is to be taken advantage of, it must be known when the primary election is called. The proceedings in such cases shall be in such form and manner as the committee or governing authority shall determine upon. (Ib.)

271. [1377a19]. **Oath of committee or governing authority.**—Before entering upon the discharge of the duties set forth in this chapter, the committee or governing authority shall be sworn, by some officer authorized by law to administer an oath, to faithfully and honestly discharge the duties herein imposed. (Ib.)

272. [1377a20]. **Failure to perform duty is a misdemeanor; punishment.**—And the failure upon the part of any member of the committee or governing authority to discharge such duties, faithfully and honestly, shall be deemed a misdemeanor, and the persons so offending shall, upon indictment and conviction in the circuit or criminal court of the county or district, be fined not less than one hundred dollars, nor more than five hundred dollars, and be imprisoned in the county jail not less than sixty days nor more than one year. (Ib.)

273. [1377a21]. **All expenses borne by the political party holding primary election.**—All expenses for holding such pri-

mary election shall be borne by the political party holding same, and the cost of publishing and circulating notice of elections, and all other expenses, including all expenses incurred by reason of any supplemental registration that may be ordered, shall be defrayed in such manner as may be provided by the committee or governing authority of the political party holding such primaries. (1901, ch. 39, sec. 11; 1903, ch. 241.)

274. [1377a22]. **Ballots printed as in regular state elections.**—The ballots used in such primary election shall be printed by order of the committee or governing authority having direction and control of such primaries, under the same restrictions and limitations as is provided by general law for the printing of ballots used in regular state elections. (Ib.)

275. [1377a23]. **Applies to all primaries.**—The provisions of this chapter shall apply to all primary elections held for the purpose of nominating candidates for state, county, district, or municipal offices hereafter held in this state. (1901, ch. 39, sec. 12.)

Application of this chapter is restricted by chapter 18.—The compulsory primary law, subsequently enacted and compiled in chapter 18, embracing sections 281 to 329, applies to party nominations for members of the general assembly, governor, railroad commissioners and representatives and senators in the United States congress, and to that extent restricts the application of this chapter (17). See secs 281 and 282.—Ed.

276. [1377a24]. **Inspectors of casting and counting ballots appointed by candidates; how; privileges.**—Each of the candidates voted for at any election held under the provisions of this chapter shall be entitled to an inspector of count, and for that purpose may appoint in writing an inspector of count to be present and witness the casting and count of the ballots in said election in each voting place in the district, ward, or county wherein said election is held, and said inspector shall have free access to the polling places during the progress of said election; provided, if there be more than five and less than ten candidates, any two of said candidates shall jointly appoint one inspector; if there be more than ten candidates and less than twenty, then any three of said candidates shall jointly appoint one inspector, and for all over twenty, then any five of said candidates shall jointly appoint such inspector. It shall be the duty of the judges on the close of the polls to admit to the count of the vote as inspector any person as

herein provided, who submits to them an appointment in writing from any candidate or candidates. (1901, ch. 39, sec. 13.) See sec. 86.

277. [1377a25]. Judges to permit presence of inspectors; refusal is a misdemeanor; fine.—Any person presenting to the judges of said election an appointment in writing from any candidate or candidates at the close of the polls as aforesaid shall be permitted to be present and witness the count of the ballots, and any judge or officer of election who shall prevent such authorized inspector to be present at the count of the balloes shall be guilty of a misdemeanor, and shall, upon indictment and conviction in the circuit or criminal court, be fined not less than \$100 nor more than \$500. (Ib.) See sec. 86.

278. [1377a26]. Hours of election.—The committee or governing authority of the political party holding such election shall designate in the public notice required to be given of said election the hours between which said election shall be held; provided, no election shall be held before the hour of 7 a. m. and not later than 9 p. m. in the different wards and districts of counties affected by this chapter. (1901, ch. 39, sec. 14.)

279. [1377a27]. Poll tax law does not apply.—A poll tax receipt and the prepayment of poll tax required by the general law as a condition precedent shall not apply to primary elections held under this chapter. (1901, ch. 39, sec. 15.)

280. [1377a28]. Saloons to be closed during hours of primary election.—The provisions of the general law requiring saloons to be closed the day of election shall only apply during the hours of said primary election. (1901, ch. 39, sec. 16.)

1. Primary elections are legalized and regulated in certain counties.—By Acts 1907, ch. 422, primary elections of political parties are legalized and regulated in counties having a population of not less than 110,000 nor more than 130,000 inhabitants, according to the federal census of 1900 or any subsequent federal census. By Acts 1909, ch. 399, primary elections in cities located in counties within said population limits are regulated. Under the federal censuses of 1900 and 1910, and under Hall v. State, 16 Cates, 235, 238, 239, 243-246 (headnotes 6 and 8), the first named act is applicable in all primary elections held in Davidson county, and the second mentioned act is applicable to certain city elections in said county.

By Acts 1899, ch. 407, primary elections are provided for and regulated in counties having a population of not less than 100,000 and not more than 110,000 inhabitants, by the federal census of 1890, or any

subsequent census. Under the federal censuses of 1890, 1900, and 1910, and under Hall v. State, 16 Cates, 235, 238, 239, 243-246 (headnotes 6 and 8), said act is applicable alone in Davidson county. By Acts 1901, ch. 12, primary elections are provided for and regulated in counties having a population of not less than 110,000 nor more than 130,000 inhabitants, by the federal census of 1900 or any subsequent census. Under the federal censuses of 1890, 1900, and 1910, and under Hall v. State, 16 Cates, 235, 238, 239, 243-246 (headnotes 6 and 8), this act is applicable alone in Davidson county. Said Acts 1899, ch. 407, and 1901, ch. 12, are probably superseded and made non-effective by Acts 1907, ch. 422, noted in the preceding paragraph.—Ed.

2. Compulsory primary law for political nominations held to be unconstitutional—Acts 1909, ch. 102, establishing a compulsory system of legalized primary law for political nominations, was held to be unconstitutional, because its body is broader than its title, for its arbitrary classification, and because it is arbitrary, oppressive, and unreasonable, in certain of its provisions which could not be elided or excised, so as to rescue and preserve the rest of the act. Ledgerwood v. Pitts, 14 Cates, 570, 584, 605-612 (headnotes 5-8). See Const., p. 81, note 10; p. 230, note 41; p. 234, note 56; p. 548, note 64.

CHAPTER 18.

COMPULSORY SYSTEM OF LEGALIZED PRIMARY ELECTIONS FOR CERTAIN POLITICAL NOMINATIONS.

281. [I377a28b1]. **Law applies to what party nominations for what offices; compliance with this law is prerequisite to placing candidates on official ballots; exceptions.**—All party nominations of candidates hereafter in this state made for office—for members of the general assembly, governor, railroad commissioner and representatives and senators in the United States congress—elected by the electors of the state at the regular November election, except as hereinafter provided, shall be made in and by party primary elections held for each political party within the terms of this chapter and in the manner, at the time and under the requirements prescribed by this chapter, and unless this chapter is complied with, party nominations falling within the terms of same shall not be placed upon the official ballots provided for by the laws of the State of Tennessee for general elections; provided, however, that presidential electors shall be excluded from the provisions of this chapter; and provided further that this chapter shall not apply to nonpartisan candidates, or to candidates desiring to become candidates independent of party nominations, nor shall it apply to persons of any party affiliation which party did not at the general November election next

preceding the primary election cast more than ten per cent. of the entire vote of the state for such parties' nominee for governor. (1917, ch. 118, sec. 1; 1921, ch. 12, sec. 1.) See secs. 275, and note.

282. [1377a28b2]. Such primary elections to be held at the regular August election.—On the day of the next regular August election, to be held upon the first Thursday in August, 1918, and biennially thereafter on said day, there shall be held in all voting precincts of this state primary elections for making the nominations provided for in section 281 hereof, the said primary elections to be held within the legal hours for elections now applicable thereto by the general laws of the state. (1917, ch. 118, sec. 2.)

283. [1377a28b3]. Nominations determined by highest number of popular votes.—Party nominations in the primaries provided by this chapter shall be determined by the candidate, or candidates, who receive the highest number of popular votes cast in such primaries; and such candidates so receiving the highest number of votes in said election shall be declared the party nominees in the manner prescribed by this chapter. (Id., sec. 3.)

284. Party nominations for candidates to fill vacancies, how made; notices.—Whenever a vacancy, by death, resignation, removal, or otherwise occurs in any office for which party nominations are provided by this chapter, and said vacancy is to be filled by special elections to be called and held as provided now by law, such party nominations of candidates may be made as follows:

In the case of nominatinos for officers to be elected by only one county, the party executive committee of said county shall meet pursuant to five days' written notice by the chairman thereof served on the members of said board in the manner provided for in this amended act, and by suitable resolution passed by said board, may provide a method of making said nominations either by a convention to be called or a speical primary election as the exigencies of the occasion may suggest and to the said committee may seem best, which resolution shall be published in some newspaper published in the county, or if none be published therein, then by written or printed notices posted at the courthouse door in said county for as much as two weeks, if sufficient time exists for same, or longer at the option of said board, before the date fixed

for said convention or primary election. (1921, ch. 12, sec. 2.)

285. Time for filing nominating petitions; appointment of judges, officers, and clerks.—And if they provide for such primary, they may fix the length of time for filing nominating petitions at such time as they think best, and adopt the provisions of this chapter as to appointing judges, officers, clerks, etc., and apply the same as near as may be to said special primary election. (Ib.)

286. Nominations in districts of two or more counties; executive committee and chairman; notice.—In the case of nominations for officers to be elected by two or more counties or in any floterial, senatorial, or congressional districts, the several chairmen of the party executive committees in the counties composing said districts shall be and are constituted a committee with the authority herein stated; and the chairman of the party executive committee in that county in said district, which cast the highest number of votes for the nominee for governor of the respective parties at the next preceding general election, shall be the chairman of such committee, and he is authorized to call said committee together by five days' written notice, either handed by him in person or sent by registered mail to all the other members of said committee, return register receipt being sufficient evidence of the service of said notice, which notice shall call said members to meet at a time and place to be set out therein. (Ib.)

287. Resolution by quorum of committee for nominations by convention or special primary election; publication or posted notices as to date.—And said committee when so called is authorized to provide, by suitable resolutions passed by a majority of those present at said meeting (a majority of those entitled to attend said meeting constituting a quorum for the transaction of business) a method of making said nomination, either by a convention of the kind designated by them or a special primary election as the exigencies of the occasion may suggest and to said committee may seem best, which resolution shall be published as much as two weeks, or longer if the committee sees proper, in each county composing the district, in some newspaper published therein, and if no newspaper is published in said county, then by written or printed notices posted at the courthouse door in said county, the time of such notices to be governed by the length of time available for such publication in the discretion of said committee, before the date fixed for said convention or primary election. (Ib.)

288. Time for filing nominating petitions for candidates in primary; election judges, officers, and clerks; returns, etc.

—And if the committee provides for holding a primary election, they may fix such time as to them seems proper to file with the chairman nominating petitions for candidates, and adopt such other provisions of this compulsory primary election law as to appointing judges, officers, and clerks of election or as to the method of holding such primary, canvassing the returns, declaring the nominee, etc., as to them may seem proper and best. (Ib.)

289. Offenses and punishments under sections 284 to 289 same as under sections 281-283 and 290 to 329.—All the provisions of the compulsory election law compiled in sections 281-283 and 290-329, which is being amended by sections 284-289, relative to offenses and punishment for the violation of the terms of the same applying to regular primary elections held under said sections 281-283 and 290-329 shall apply to primary elections to be held as provided by this amendment compiled in sections 284-289 for party nominations by special primary elections. (Ib.)**290. [1377a28b4]. Executive committee of each political party shall be the primary election commissioners for such party.**—The executive committee for the state, or governing body of the state, for each of the political parties provided for in this chapter, shall have and exercise the powers conferred and perform the duties prescribed by this chapter, as primary election commissioners for the party the same represent. (1917, ch. 118, sec. 4.)

Primary election commissioners named for the democratic and republican parties until the regular August election in 1918 are omitted as a temporary provision no longer in force.—Ed.

291. [1377a28b5]. Oath of state and county primary election commissioners.—The said state executive committeemen here above named, acting in their respective capacities as primary election commissioners, shall before entering upon the discharge of their duties, respectively, take oaths of office, to be filed in the office of the secretary of state, to support the constitution of the United States, the constitution of the State of Tennessee, and that they will honestly, fairly, and impartially discharge the duties of their office without fear, favor, or impartiality [partiality], to the best of their ability, and a similar oath shall be taken by the county primary election commissioners hereinafter provided for in this chapter, the

same to be filed in the office of the respective county court clerks of the countis for which they are selected. (Id., sec. 5.)

292. [1377a28b6]. Election of state executive committees who shall constitute boards of primary election commissioners for their respective parties.—Upon the date of the first primary to be held under this chapter, and biennially thereafter, new party executive committes shall be elected by congressional districts, according to the provisions of this chapter, for political parties, subject to the provisions hereof, to consist of two from each congressional district in the state, and the said executive cmmiteemen thus elected shall constitute the respective boards of primary election commissioners for their respective parties for the ensuing two years, to take office on September 1st, following their election, or as soon thereafter as they are qualified. (Id., sec. 6.)

292. [1377a28b7]. Boards to fill vacancy in membership; majority to control; quorum.—The respective members of the state primary election boards herein provided for shall have power to fill any vacancies occurring in their membership by death, resignation, or otherwise, during their term of office. The said respective primary election boards in their meetings and deliberations shall be controlled by a majority of the members thereof, and the vote of a majority of either of said primary election boards shall be necessary to carry any motion, order, or resolution, or other act of said boards, and fifteen members of said primary election board shall constitute a quorum thereof for the purpose of transacting business, but a less number than a quorum may meet and adjourn from day to day, and may, by proper process, compel the presence of absent members. (Id., sec. 7.)

293. [1377a28b8]. State primary board to elect county primary election commissioners; division among candidates.—The said respective state boards of primary election commissioners hereinbefore provided for shall meet at the capitol, in the city of Nashville, Tennessee, subject to the calls of their respective chairmen, on or before the first Monday in June, 1918, and on the first Monday in June every two years thereafter, for the purpose of selecting and appointing county boards of primary election commissioners for each county in the state. At which meeting the said democratic state board of primary election commissioners shall appoint five commissioners to compose the county democratic primary boards in each county of the state, and the said republican state board

of primary election commissioners shall appoint five commissioners to compose the county republican primary boards of the respective counties. Said county primary election commissioners shall be members of their respective executive committees, to be nominated and certified by the county committee to the state board of primary commissioners from lists furnished the county committee by the candidates who may have qualified in said election for the respective offices for which nominations are to be made in the primary election to be held, to be divided equally among the candidates as possible, three of whom shall constitute a quorum for the transaction of business. (Id., sec. 8.)

294. [1377a28b9]. **Terms of county primary election board; oath; vacancies filled.**—The terms of office of the said county primary election boards shall be for two years from the date of their respective appointments, provided, however, that the said county primary election boards shall continue in office until their successors are appointed and qualify, and provided further that the said county primary election boards before organization and entering upon the discharges of their respective duties, shall subscribe to the oath hereinabove [section 291] provided. Any vacancies occurring in said primary election boards by death, resignation, or otherwise shall be filled by the said state primary election board appointing the said county commissioners, and such commissioners so elected to fill the vacancy shall hold office during the unexpired term for which he was elelted. (Id., sec. 9.)

295. [1377a28b10]. **Chairmen may call special meetings by written notice to members.**—The chairman of any state primary board, or of any county primary board, may call special meetings of the said respective boards upon five days' written notice, served either in person or by registered letter, upon the respective committeemen. Said notice to name the time, place, and purpose for which the said special or extraordinary meeting is called. (Id., sec. 10.)

296. [1377a28b11]. **Precinct primary election officers appointed; oath; authority limited; vacancies filled; names to be published or posted.**—The officers selected to hold primary elections under this chapter shall be appointed by the respec-tive county election boards, to wit: A receiving officer, three judges, and two clerks for each party, and, in making such appointments, the said county primary board shall select or appoint bona fide members of the party holding said primary

and as near as possible divide the respective precinct officers between the candidates running in said party primaries, the said selection of precinct officers to be made from a list furnished by candidates running, or by their respective county managers where such lists are furnished to the said county primary boards. Before the said precinct election officers shall enter upon the discharge of their respective duties, they shall subscribe to an oath to faithfully, impartially, and honestly hold and conduct the said primary election, according to the laws of the state, and without fear, favor, or partiality to any candidate. No officer appointed or officiating in any party primary shall interfere or have any authority over the conduct of any other primary. If any precinct election officer so selected by the county primary boards shall fail or refuse to act, and the said primary election boards shall not fill the vacancy prior to the opening of the polls, then such vacancy shall be filled by the officers appearing and serving. The officers so selected to fill the vacancy to be from the supporters of the candidate or candidates, represented by the officer whose failure to serve causes such vacancy. Should all of the officers selected to serve in any precinct fail or refuse to serve, then, in that event, the voters of the said political party represented by said declining officers present at the opening of the polls shall select the precinct election officers to hold said primary election in such precinct, giving as near equal representation as possible to all candidates running in said primary, and such officers so selected shall thereupon proceed to open and hold said primary election. The said county primary election board shall select and publish the precinct election officers at least ten days before the date of any primary election to be held under this chapter. The names of the officers so selected shall be published in some newspaper in the county for which they are selected, if there be such published therein, and if not, their names shall be posted for ten days at the courthouse door of said county. (Id., sec. 11.)

297. [1377a28b12]. Primary election officers are punishable for the same offenses as general election officers.—Any act or deed declared by the general laws of the state an offense in the case of a general election is hereby made an offense in case of officers of such primary election, and shall be punishable in the same form and manner as now prescribed by law. (Id., sec. 12.)

298. [1377a28b13]. Compensation of primary election

officers and primary county boards.—The officers of the said primary election shall receive the same compensation to be paid in the same way as now provided by law for the payment of officers of regular elections. The compensation of the said county primary election boards shall be fixed and paid by the respective county courts of the counties in which they serve. (Ib.)

299. [1377a28b14]. Ballots, poll lists, and tally sheets, how furnished and paid for; number; how prepared; ballot counted and certified; returns; results announced; certified copy thereof.—The ballots to be used in said primary elections, the poll lists and tally sheets thereof shall be prepared and provided for by the respective county primary election boards and shall be paid for out of the county funds. At least two hundred ballots to each one hundred votes cast at the last regular election shall be provided and furnished at each voting place; each set of election officers shall be furnished with a duplicate set of poll lists and tally sheets, upon which are to be recorded the name of each voter and each tally sheet shall have printed or written thereon the names of all candidates to be voted for by the voters of the party for which it is provided, which names shall be arranged in alphabetical order, under the heads of the offices for which they are candidates, and the same arrangement of names shall be made upon the printed ballots used therein. The ballots cast in such primary elections shall be counted and the results certified to by the officers on the tally sheets provided for the respective parties in like manner as provided for the counting, certification, attestation, and return of the ballots, poll lists, tally sheets, and returns in regular elections and all the ballots, poll lists, and tally sheets used in said elections shall be delivered to the respective chairmen of the county primary boards of the county for which said election officers shall have received their appointments not later than 12 o'clock noon, on Monday following said primary. When counting of the ballots in any precinct is completed, the officers of elections shall publicly announce and proclaim the result thereof, and the officers thereof shall, on demand of any voter present, furnish to him a certified copy of the result of the said election in said precinct. (Id., sec. 13.)

300. [1377a28b15]. Qualification of primary voters; payment of poll taxes; registration.—No person shall be eligible to vote in the primaries provided for in this chapter who shall

not be qualified to vote in the next general election held under the laws of this state in the following November. Each voter before voting in such primaries, shall produce the regular evidence required by the general laws of the state that he has paid his poll tax imposed upon him by law for the year next preceding the primary election, if he be subject to the payment of poll tax, and shall also establish, if the registration laws prevail in his voting precinct, that he has been duly registered in the same manner as required in the general elections. (Id., sec. 14.)

301. [1377a28b16]. **Primary election officers at each precinct; political parties vote in separate ballot boxes, etc.**—As before provided, there shall be a set of election officers at each precinct in the state appointed by their respective county primary election boards, the voting of each party to be in a separate ballot box with separate poll lists, ballots, and tally sheets provided and kept therefor. (Ib.)

302. [1377a28b17]. **Primary election voters must be affiliated with their separate political parties.**—No voter shall be eligible to vote in a primary election of any party unless he be a bona fide member of such political party and affiliated therewith, or unless at the time he shall offer to vote he shall declare his allegiance to the political party in whose primary he offers to vote and states upon oath, if challenged, that he expects to affiliate with such party in whose primary he is offering to vote. (Ib.)

303. [1377a28b18]. **Precinct registrars to be present with registration books or certified copies.**—In precincts where registration is required by law, the precinct registrars appointed according to the law, and having charge of the registration books, are required to have and keep one or more of such precinct registrars present at such primary election from the opening to the closing of the polls. In lieu of such registration books, a certified copy thereof may be kept, the said books to be used as evidence of registration or nonregistration of the voters of such precinct, in case registration receipts issued to voters have been lost, or mislaid or cannot be produced. (Ib.)

304. [1377a28b19]. **County trustees to furnish certified lists of paid poll taxes.**—The county trustee of each and every county shall have at each voting precinct a certified copy of the list of voters of such district or precinct who have paid

their poll tax for the preceding year, which list shall be placed in the hands of the officers or judges of election on or before the opening of the polls. (Ib.)

305. [1377a28b20]. **Compensation of registrars, county election commissioners, and county trustees.**—The respective counties shall make such compensation for the service of registrars, county election commissioners, and of county trustee for rendering the services provided in the preceding two sections as made in the case of regular elections. (Ib.)

306. [1377a28b21]. **Returns to be canvassed and results certified; certificates filed where; precinct returns to be filed where.**—On Monday following the primary election, the respective county primary election boards shall meet at the courthouse of such county, at 12 o'clock noon, and publicly canvass and compile the result of the primary election, as shown by the returns of the election officers, and shall make and sign duplicate certificates of the result of said election, showing the number of votes cast in said primary for each candidate for all the offices in their respective parties. One copy of such certificate shall be filed with the county court clerk of their respective counties, and the other copy thereof shall be sent by registered mail to the secretary of state at Nashville, Tennessee, to be held by him until canvassed by the respective state primary election boards. The said county primary election board shall file one copy of the precinct returns, to wit: the ballots, poll lists, and tally sheets, with the county court clerks of their respective counties, and shall forward the other copy thereof to the secretary of state for preservation. (Id., sec. 15.)

307. [1377a28b22]. **Board of canvassers of primary elections.**—The respective state boards of primary election commissioners hereby created shall constitute the board of canvassers of the primaries held under the provisions of this chapter. (Id., sec. 16.)

308. [1377a28b23]. **State board of primary election commissioners to canvass returns and declare nominees, when.**—On the twentieth day after the holding of any primary election under this chapter, unless the same falls upon Sunday, then upon the 21st day after such election, the said respective state board of primary election commissioners herein provided for shall meet at the capitol, in Nashville, Tennessee, pursuant to notice given by respective chairmen thereof, and

they shall then proceed to publicly canvass the returns of said primary elections and determine and declare who shall have been nominated for all offices. (Id., sec. 17.)

309. [1377a28b24]. **Run-off ordered, when the two highest candidates tie.**—When there is a tie between the two highest candidates, another primary shall be ordered within thirty days, and not less than twenty days, to decide the same between those candidates, to be held in the same manner and subject to all the rules and provisions governing the first primary under the provisions of this chapter, and the candidate receiving the highest vote in such run-off, shall be declared the nominee of the party for said office. (Ib.)

310. [1377a28b25]. **State primary election boards to certify to county election commissioners the nominees of their respective parties which shall be placed on official ballots, floaters and senators under rotation plan, how to run.**—The state primary election boards, hereby empower [empowered] to declare the nominees of their respective primaries, shall, at least fifteen days before the regular November election for which such nominations have been made, certify to the election commissioners of each county in which such nominees are candidates for office, the names of all nominees of their respective parties within the provisions of this chapter, for offices to be voted for in said respective counties in said general election; and the names so certified by the said state primary election boards shall be by the county election commissioners placed upon the official ballots provided by law for use in said regular November election; provided, that in all floatorial and senatorial districts of the State of Tennessee where a rotation system exists, that a candidate for floater or senator shall be required to run in the county only whose time it is under the rotation plan to furnish the candidate. (Id., sec. 18.)

311. [1377a28b26]. **Official primary ballots; color and description.**—Only the official ballots provided for in this chapter shall be used to hold said primaries. The official ballots of the different political parties shall be of different colors or tints, the same to be determined by the state board of primary election commissioners, but the color of the ballot of each party shall be uniform throughout the state and shall be of uniform width, not less than nine inches, nor more than nine and one-half inches wide, and of such length as is necessary to contain the offices and names of the candidates re-

quired to be printed thereon. On the back of the ballot shall be conspicuously printed the words: "Official Primary Ballot Party Election day of.....," giving the name of the party for which it is designated and the date of the election to be held, and shall also have printed on the back thereof the facsimile of the signatures of the county board of primary election commissioners of the party holding said election. (Id., sec. 19.)

312. [1377a28b27]. **Names of candidates to be printed on ballots.**—The ballots shall have printed on the face thereof the names of all candidates for the various offices, arranged alphabetically under the head of the offices for which they are candidates. (Ib.)

313. [1377a28b28]. **Ballots to be furnished by boards to election judges or officers to be delivered to voters.**—The ballots of each political party shall be furnished by the respective boards of primary election commissioners to the judge or officer of election in each precinct, and, on the day of such primary election, the judges shall take charge of the ballots of the respective parties for which they are appointed and shall by them be delivered to the voters of their party as herein provided. (Ib.)

314. [1377a28b29]. **Misdemeanor for election judge to allow ballots out of his possession, or to be delivered to voter before he is ready to vote.**—It shall be a misdemeanor for any judge to allow the ballots delivered to him to go out of his possession, except as provided; or to be delivered to any voter, until the voter has properly qualified and announced his intention to vote in the primary of that party. (Ib.)

315. [1377a28b30]. **Election judge to require unvoted ballot to be surrendered and destroyed.**—In case any voter after receiving the ballot shall fail to vote, or to give his ballot to the officers to be deposited in the ballot box, the judge shall require that such ballot be surrendered to them [and] at once destroyed in the presence of the voters and the officers of election. (Ib.)

316. [1377a28b31]. **Misdemeanor for voter not to surrender ballot or to take it away.**—It shall be a misdemeanor for any voter to refuse to so surrender any ballot, or take any ballot away from the polling place. (Ib.)

317. [1377a28b32]. **Dortch law applicable; table for marking ballots; ballots marked, how.**—In the precincts where the

Dortch election law applies, all provisions of the general law to the manner of voting in regular elections shall apply to voting in primaries at such precincts; in precincts where the Dortch law does not apply a suitable table or desk shall be supplied, on which the ballots may be marked, and, in all precincts of the state the voters shall vote by making a cross mark before or after the name of the candidate for whom he wishes to vote, provided that in such precinct the voter may retire from the polling place and have assistance in marking his ballot, and no ballot shall be rejected because improperly folded. (Ib.)

The Dortch law was made applicable to the whole state by Acts 1921, ch. 117, compiled in section 156.—Ed.

318. [1377a28b33]. Nominating petitions to put candidates on official primary ballot; candidates declared nominees, without election, when.—The name of no candidate shall be printed upon any official ballot used in any primary under this chapter unless, in case of candidates voted for in all counties of the state, or of a congressional district, at least sixty days and in all other cases at least thirty days before such primary, a nominating petition shall be filed in his behalf with the authorities herein designated, signed by qualified voters of the party whose nomination he seeks, to the number of twenty-five. Such nominating petitions shall be in substance as follows: "We the undersigned qualified voters of the county of....., State of Tennessee, and members of the.....party, hereby nominated [nominate].....of.....coonty as a candidate for the office of.....to be voted in the primary election to be held by the said party on the.....day of..... We request that his name be printed upon the official ballots to be used in such primary." Provided, that where only one candidate for any office for which a candidate is to be nominated under this chapter shall so qualify, he shall be declared the nominee for that office and his name shall not be placed on the official ballot, and provided, further, that should no contest exist in any county of the state for any of the nominations provided for in this chapter, the board of primary election commissioners for such county shall so declare, and no primary election shall be held in such county. Said declaration annulling such election shall be made by said board within not less than twenty days preceding such primary.

In nominating the candidates elected by the electors of the

entire state, the nominating petition shall be filed with the respective chairmen or secretaries of the state board of primary election commissioners for the particular party; for all other offices, such nominating petitions shall be filed with the chairmen of the respective county boards of primary election commissioners in all counties participating in the election for which the person nominated is a candidate. (Id., sec. 20.)

319. [1377a28b34]. Names of candidates to be certified to county primary board and printed on official ballots.—It shall be the duty of the chairmen of the respective state boards of primary election commissioners to certify to the chairmen of the various county primary boards the names of all candidates in whose behalf proper nominating petitions have been filed not less than fifteen days before the date of the primary, and it shall be the duty of the county primary election commissioners to have printed upon the official primary ballots herein provided for the names of all candidates so certified to them and all candidates in whose behalf proper nominating petitions have been filed with them. (Id., sec. 21.)

320. [1377a28b35]. Nominating petition in one county and sworn copies in others, when.—Where a petition is required to be filed in more than one county, certified duplicates of such nominating petitions, duly attested under oath to be corrected [correct] by one of the signers thereof, shall be sufficient to be filed with the respective county boards in lieu of the original, but the original thereof shall be filed with the county chairman of at least one of the counties participating in such primary. (Ib.)

321. [1377a28b36]. Misdemeanor to vote in more than one primary; fine.—It shall be a misdemeanor for any person to vote in the primary of more than one party in any primary election held under this chapter, and upon conviction shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars. (Id., sec. 22.)

322. [1377a28b37]. Candidates entitled to inspectors or watchers; their rights, powers, and duties; certified statement of votes for each candidate.—Any candidate for a primary nomination under this chapter, shall, upon his conferring that authority, either in writing, in person, or by his duly authorized county manager, have from the opening of the polls until the vote shall have been counted and certified, an inspector or watcher of election, who shall have the right

to watch the holding of said election, the counting of the votes therein cast and the certification of the returns, such watcher or inspector to have the right to challenge, question, and examine any voter who may offer to vote in said primary election, and, upon the request of such inspector or watcher, the officers, judges, and clerks of such election shall give him a statement signed by them setting forth the vote of each candidate as cast and counted in said precinct. Such inspector or watcher shall have a right to examine the ballots as they are counted. Such watchers or inspectors, however, shall not offer or attempt to influence the vote of any elector for or against any candidate, nor shall he interfere with the proper holding and conducting of said election. (Id., sec. 23.)

323. [1377a28b38]. Laws applicable to primary elections.—All laws applying to regular and general elections, not in conflict with the provisions of this chapter, shall apply to primary elections held thereunder. (Id., sec. 24.)

324. [1377a28b39]. Candidates as watchers and inspectors; entitled to certified copies of poll lists and tally sheets upon payment of fees.—All candidates in said primary elections shall have the right to be present in person and to exercise the same rights and privileges as the watchers and inspectors of elections hereinbefore provided for, and the said candidate shall have the right to have delivered to him, upon demand, certified copies of all poll lists and tally sheets used in any primary election upon applying to any county primary board or state primary election board, upon the payment of regular fees therefor. (Id., sec. 25.)

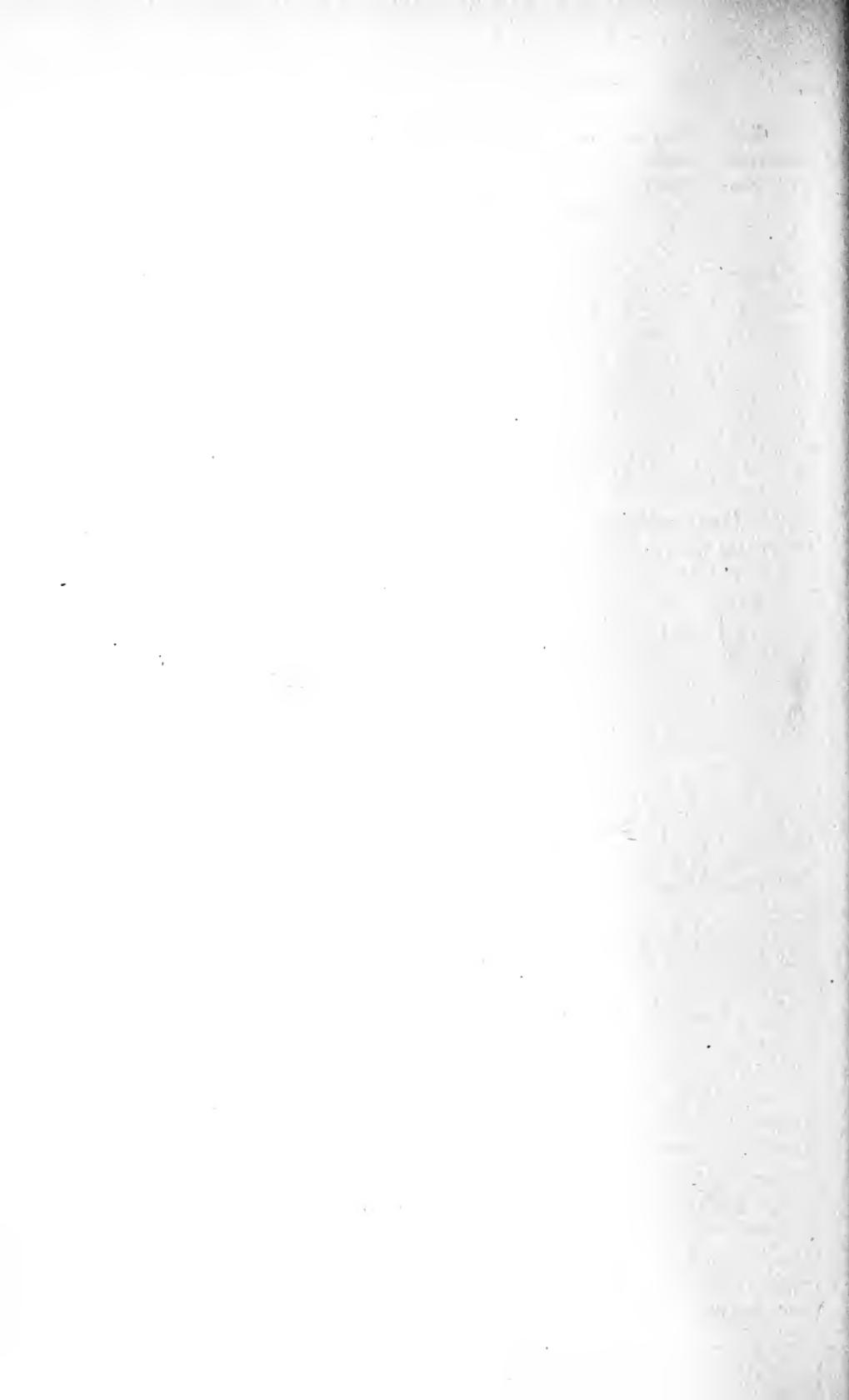
325. [1377a28b40]. Misdemeanor to interfere with inspectors or watchers.—It is hereby declared to be a misdemeanor for any officer of election to interfere with the discharge of the duties of any inspector or watcher of election appointed under the provisions of this chapter, or to prevent him from witnessing the casting, counting, and certification of the ballots cast in any primary election. (Id., sec. 26.)

326. [1377a28b41]. Chairman and secretary of respective state primary election boards; chairman decides tie vote.—The chairman and secretary of the state committee of each party, and their successors duly elected, shall be the chairman and secretary of the respective state primary election boards, and in the event of a tie vote in any matter, the chairman may cast the deciding vote. (Id., sec. 27.)

327. [1377a28b42]. Organization of county primary election boards.—The said respective county primary election board shall organize within ten days after their appointment by the election of a chairman and secretary of such county boards. (Ib.)

328. [1377a28b43]. Appeal from county primary election boards to state board as to appointment of precinct election officers; removal and appointment of successor, when.—If any county primary election board shall fail to comply with the provisions of this chapter in the appointment of the precinct election officers, and shall fail or refuse to give as near as possible equal representation to all candidates at the polls, an appeal from such action shall lie to the state board of primary commissioners for the party in question and this board shall be at once convened upon not less than three days' written notice to all members, at which time the said state primary board shall review the action of the said county primary board and take such action as will carry out the terms and spirit of this chapter and give equal representation as near as possible to all candidates in the appointment of precinct election officers. If the conduct of any county primary election commissioner shall by the state primary election board be held to have been fraudulently or corruptly done, he may be removed and his successor appointed from a member of the county executive committee of the party to which he belongs. (Ib.)

329. [1377a28b44]. Contest and notice thereof; hearing before state primary election board.—If any contest shall be instituted as a result of holding of any primary [election] under this chapter, a candidate or candidates so desiring to contest shall give notice thereof in writing to the chairman of the state primary election board holding said primary election within five days after the said county primary election boards have met and canvassed the returns. Said notice of contest shall likewise be served upon all candidates adversely interested within a like period. In the said notice of contest, grounds thereof shall be fully stated, so as to enable the contestants adversely interested to prepare their defense thereto. After the filing of such notice of contest, the same shall be considered and passed upon by the said state primary election board, which shall hear and determine such contests and make such disposition thereof as fairness and justice shall require. (Id., sec. 29.)



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